

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

3 - - - - -

4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF RAYMOND J. PRITCHARD

23 VOLUME II, PAGES 160 - 349

24

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1           (The following is the continued deposition  
2 of RAYMOND J. PRITCHARD, taken pursuant to Notice of  
3 Taking Deposition, at the offices of Brown, Todd &  
4 Heyburn PLLC, Attorneys at Law, 3200 Providian  
5 Center, Louisville, Kentucky, commencing at  
6 approximately 8:28 o'clock a.m., October 28, 1997.)

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24

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## 1 I N D E X

2	EXHIBITS	DESCRIPTION	PAGE MARKED
3	Plfs'	1456 "BATCo Chairman's Advisory	
4		Conference Rio - March 1983,	
5		MAJOR ISSUES AND ACTION	
6		AGREED," Bates 109877093-7	173
7		1457 "NOTES ON GROUP RESEARCH &	
8		DEVELOPMENT CONFERENCE, SYDNEY,	
9		1978," Bates 107468098-104	182
10		1458 "EXECUTIVE SUMMARY, TECHNICAL	
11		ABSTRACT, MAIN TEXT," Bates	
12		102391375-86	192
13		1459 "1984 LEGAL CONFERENCE, List	
14		of Delegates," Bates	
15		109870747-8	198
16		1460 Memo dated 29 January, 1985,	
17		Thornton to Communication Group,	
18		Bates 107620311	201
19		1461 "BIOLOGICAL CONFERENCE,	
20		Southampton, 9-11th April 1984,"	
21		Bates 100453480-690	210
22		1462 Meeting minutes dated 22 March,	
23		1983, "MUTAGENICITY OF 'VINTAGE'	
24		CIGARETTES," Bates	
25		100436619-24	220

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1	1463 "Rationale for R&D," Bates	
2	109870277-9	229
3	1464 Memo dated 9th September 1988,	
4	Sheehy to list, Bates	
5	483100380-1	234
6	1465 "TALK TO TMDP - CHELWOOD -	
7	AUGUST 1990," Bates	
8	502619006-29	238
9	1466 TRST meeting minutes dated	
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11	521011586-8	251
12	1467 TSRT meeting minutes dated 4th	
13	February, 1985, Bates	
14	521011579-82	254
15	1468 TSRT meeting minutes dated	
16	24th July 1985, Bates	
17	512100906-8	259
18	1469 "TOBACCO STRATEGY REVIEW TEAM,	
19	PHILIP MORRIS INC.," Bates	
20	522000971-8	267
21	1470 TSRT meeting minutes dated	
22	20th November 1987, Bates	
23	401097954-6	272
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1	1471 TSRT meeting minutes dated 23rd	
2	November 1988, Bates	
3	201827781-6	281
4	1472 "COMPENDIUM OF EPIDEMIOLOGICAL	
5	STUDIES WORK PLAN," Bates	
6	107318454-9	288
7	1473 Letter dated 5th March 1986,	
8	Thornton to Pritchard, Bates	
9	107318980	290
10	1474 TSRT meeting minutes dated	
11	19th April 1989, Bates	
12	201798708-12	302
13	1475 "NICOTINE ADMINISTRATION:	
14	ARIEL SMOKING DEVICES," dated	
15	2.8.1966, Bates 105534272-85	306
16	1476 Letter dated 29th December	
17	1986, Sheehy to Crawford,	
18	Bates 202218702-4	312
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20	WITNESS	EXAMINATION BY
21	Raymond J. Pritchard	Ms. Wivell
22		Mr. McGaan
23		
24		
25		

1 P R O C E E D I N G S

2 (Witness previously sworn.)

3 RAYMOND J. PRITCHARD

4 called as a witness, being previously  
5 sworn, was examined and testified as  
6 follows:

7 ADVERSE EXAMINATION (cont'd)

8 BY MS. WIVELL:

9 Q. Good morning, sir.

10 A. Good morning.

11 Q. You understand you're still under oath?

12 A. I do indeed.

13 Q. Yesterday when we ended for the day we were  
14 talking about Exhibit 1455. Do you have that in  
15 front of you?

16 A. Yes, I do.

17 Q. That's the minutes of the BATCo chairman's  
18 advisory conference held in Brazil in March of 1983;  
19 right?

20 A. Correct.

21 Q. Would you turn your attention to page -- the  
22 page that ends with Bates number 090. There it says  
23 at point six there was a discussion on the role and  
24 purpose of Millbank and whether it's achieving its  
25 purpose; right?

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1 A. Correct.

2 Q. And do you recall this discussion, sir?

3 A. I don't recall it.

4 Q. All right. Millbank, again, is the headquarters  
5 of BATCo; right?

6 A. It was at that time, yes.

7 Q. Now the next paragraph says, "It was noted that  
8 the BATCo Board is charged by B.A.T Industries with  
9 developing, agreeing and coordinating the key  
10 strategies for its tobacco activities." Have I read  
11 it correctly so far?

12 A. You have.

13 Q. All right. And it says, "Delegates welcomed the  
14 statement; they were given copies of the statement  
15 which they will circulate to their own management;"  
16 right?

17 A. Correct.

18 Q. Do you see anything there that indicates that  
19 you disagreed at all with the -- the statement that  
20 it was -- the BATCo board was charged by B.A.T  
21 Industries with developing, agreeing and coordinating  
22 the key strategies for its tobacco activities?

23 A. No.

24 MR. McGAAN: Object, vague.

25 Q. After --

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1 MR. McGAAN: Wait. I'm not done, counsel.

2 It's -- I'm taking a look at your question -- vague  
3 and argumentative.

4 I'm sorry, go ahead.

5 Q. Sir, after the conference in March of 1983 that  
6 Exhibit 1455 is the minutes of, did you in any way  
7 write to anyone in the BAT Group to indicate that you  
8 did not believe the BATCo board was charged by B.A.T  
9 Industries with developing, agreeing and coordinating  
10 the key strategies for its tobacco activities?

11 A. Not that I can recall.

12 Q. Now sir, if we turn to the very next page of  
13 Exhibit 1455, it says there, "Delegates welcomed the  
14 fact that managers of tobacco interests will continue  
15 to have direct contact with Millbank on tobacco  
16 matters;" right?

17 A. Correct.

18 Q. Now before this conference in 1983, the tobacco  
19 group companies within the BAT Group did have direct  
20 contact with BATCo on tobacco matters; didn't they?

21 A. I think that is correct.

22 Q. And this document, Exhibit 1455, at page 091  
23 goes on to say, "Similarly there can, under BATCo's  
24 aegis, be meetings and contacts between any tobacco  
25 companies in the Group." Right?

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1 A. Correct.

2 Q. All right. And in fact BATCo did serve as a  
3 clearing house or coordinating group for meetings and  
4 contacts between the B.A.T tobacco group companies;  
5 right?

6 MR. McGAAN: Object, compound and vague.

7 A. I don't think that is entirely correct.  
8 Companies could meet, delegates could meet without  
9 necessarily clearing it with Millbank.

10 Q. I'm --

11 I didn't mean to imply that it -- that  
12 Millbank's okay was or approval was necessary, but  
13 you would agree that BATCo did act as a coordinating  
14 group for the BAT Group tobacco companies; right?

15 MR. McGAAN: Object, vague. You can  
16 answer.

17 A. It -- it acts as a coordinator, yes, --

18 Q. All right.

19 A. -- when appropriate.

20 Q. And it says here in the last sentence, "The  
21 objective is to retain or restore the tobacco family  
22 feeling;" right?

23 A. That's correct.

24 Q. All right. What --

25 What's meant by "the tobacco family feeling?"

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1 MR. McGAAN: Object, it calls for  
2 speculation.  
3 A. I don't really know what -- what was implied at  
4 that time.  
5 Q. Sir, would you take a look at the list of  
6 participants that's on the second page of Exhibit  
7 1455. The participants at this conference included  
8 the chairman of BATCo?  
9 A. Correct.  
10 Q. That was Stewert Lockhart; right?  
11 A. That's correct.  
12 Q. They included the deputy chairman and managing  
13 director of BATCo?  
14 A. That's correct.  
15 Q. There was the managing director of BATUKE who  
16 attended?  
17 A. That's correct.  
18 Q. There was the chairman of Brown & Williamson,  
19 Wally Hughes, who attended?  
20 A. Correct.  
21 Q. You attended?  
22 A. I did.  
23 Q. As well as the directors -- two B.A.T directors,  
24 Mr. Goddard and Mr. Heath; right?  
25 A. Correct.

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- 1 Q. All right. Now in addition to those folks,  
2 there were also representatives from B.A.T Cigaretten  
3 Fabriken in Germany?
- 4 A. Correct.
- 5 Q. There was a representative from the Souza Cruz  
6 tobacco company in Brazil?
- 7 A. That's correct.
- 8 Q. Actually there were two Souza Cruz  
9 representatives; right?
- 10 A. Yes, there were.
- 11 Q. There was a representative, in fact the  
12 president of the Imperial Tobacco Company in Canada?
- 13 A. That's correct.
- 14 Q. And there was also the managing director of the  
15 Australian subsidiary, the Wills company; right?
- 16 A. That's correct.
- 17 Q. And all of these people got together at this  
18 conference in Rio de Janeiro in March of 1983 at the  
19 request of BATCo's chairman; right?
- 20 A. I don't know who sent the invitation.
- 21 Q. Well we do know that these are the minutes of  
22 the, quote, "BATCo CHAIRMAN'S ADVISORY CONFERENCE."
- 23 A. That's correct.
- 24 Q. Right?
- 25 A. That's correct.

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1 Q. All right. Sir, there were secret minutes made  
2 of this meeting too; weren't there?

3 A. Not that I'm aware of.

4 Q. You've never seen minutes marked "SECRET" from  
5 the meeting of the BATCo chairman's advisory  
6 conference that occurred in Rio in March of 1983?

7 A. Not that I can recall.

8 (Plaintiffs' Exhibit 1456 was marked  
9 for identification.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as  
12 Plaintiffs' Exhibit 1456, this is a document that's  
13 stamped "SECRET" at the top; isn't it?

14 A. That's correct.

15 Q. And Exhibit 1456 bears the Bates number  
16 109877093; right?

17 A. Correct.

18 Q. And the document is entitled "BATCo Chairman's  
19 Advisory Conference, Rio - March 1983, MAJOR ISSUES  
20 AND ACTION AGREED." Right?

21 A. That's correct.

22 Q. Now sir, were there two BATCo chairman's  
23 advisory conferences that were held in Brazil in  
24 March of 1983?

25 A. Not that I'm aware of.

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1 Q. You're only aware of one; right?

2 A. Correct.

3 Q. All right. Now sir, let me ask you this: Is it  
4 typical within the BAT Group to have a meeting and  
5 then write one set of minutes for circulation, then  
6 another set of minutes that are, quote, unquote,  
7 secret?

8 MR. McGAAN: Object, argumentative, assumes  
9 facts not in evidence.

10 You can answer.

11 A. The purpose of issuing a separate set of minutes  
12 on certain points would be to restrict circulation.

13 Q. Well why would it be necessary to restrict  
14 circulation?

15 A. Because it is not always necessary for everyone  
16 to know. And some of these things were -- it would  
17 be prudent to keep the decisions restricted.

18 Q. So, sir, are you telling us that the information  
19 that would have been contained in Exhibit 1456 would  
20 have been prudent not to circulate widely throughout  
21 the company?

22 MR. McGAAN: Object, argumentative. You  
23 asked him a general question. If you'd like him to  
24 read this document, he can answer with regard to this  
25 document.

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1 In fact, why don't you take a minute and read  
2 that.

3 Q. Sir, you've read 1456?

4 A. I have.

5 Q. All right. Now are you telling us it would have  
6 been prudent not to circulate -- circulate widely  
7 throughout the BAT Group companies the information  
8 contained in Exhibit 1456?

9 A. I am indeed. It would have been, I'm sure, very  
10 useful for our competitors if they had been able to  
11 get their hands on this sort of document.

12 Q. Now sir, I'd like you to turn to the "SMOKING  
13 AND HEALTH" section of Exhibit 1456. There it says  
14 at point eight, "The Group's tobacco companies should  
15 have regard only to the most recent public affairs  
16 documents published by Millbank after legal vetting."  
17 Correct?

18 A. Correct.

19 Q. All right. You told us yesterday legal  
20 "vetting" meant review; is that right?

21 A. I think that's correct.

22 Q. All right. So in other words, it was agreed at  
23 this conference that the BAT Group's tobacco  
24 companies would pay attention to public affairs  
25 documents that had been reviewed by the legal

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1 department. Is that what that first sentence means?

2 A. After the documents had been reviewed by the  
3 department, yes, that's correct.

4 Q. All right. And sir, it also says, "Back files  
5 should be reviewed." Right?

6 A. That's right.

7 Q. Why were the back files to be reviewed?

8 A. I have no idea.

9 Q. Isn't it true that back files would be reviewed  
10 so that they could be rewritten if they were  
11 dangerous?

12 MR. McGAAN: Object, argumentative, lacks  
13 foundation.

14 A. I don't believe that was the purpose, but I have  
15 no idea what the purpose was.

16 Q. All right. Now the next thing it says is,  
17 quote, "The extent of holding company liability for  
18 the actions of subsidiaries under product liability  
19 legislation will be examined. The form" --  
20 "examined, period." Right?

21 A. Correct.

22 Q. Now the holding company, that's B.A.T Industries  
23 P.L.C.; right?

24 A. B.A.T was a holding company, but so was --

25 The Canadian company was a holding company. It

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1 had subsidiaries.

2 Q. All right. But what is being referred to here  
3 is B.A.T Industries; isn't it, sir?

4 A. I don't know.

5 MR. McGAAN: Object, calls for speculation.

6 A. I don't know.

7 Q. All right.

8 A. Doesn't say so.

9 Q. Now it also says, "The form and communication of  
10 S&H guidelines from Millbank will be reviewed."  
11 Right?

12 A. It does.

13 Q. Who was going to do that review, sir?

14 A. I have no idea.

15 Q. It was going to be the lawyers; wasn't it?

16 A. I --

17 MR. McGAAN: Object, calls for speculation.

18 A. I don't know.

19 Q. Goes on to say, "Tobacco companies will seek as  
20 allies in the S&H debate other industries in a  
21 similar situation, other companies in diversified  
22 tobacco groups, their own employees, and suppliers;"  
23 right?

24 A. Correct.

25 Q. And that's -- that's part of the industry's

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1 attempt to speak with one voice; right?

2 MR. McGAAN: Object, argumentative, calls  
3 for speculation.

4 A. It talks about other industries.

5 Q. Well sir, that was part of the tobacco  
6 industry's attempt to speak with one voice; right?

7 MR. McGAAN: Same objection, calls for  
8 speculation.

9 A. I don't know.

10 Q. Well sir, when you were president -- or I'm  
11 sorry.

12 When you were CEO of Brown & Williamson, you  
13 were aware that Brown & Williamson attempted to  
14 elicit, for example in the lobbying field, allies in  
15 other industries; right?

16 A. Not that I can remember.

17 Q. You don't recall involvement with, oh, grocers?

18 MR. McGAAN: Object, vague.

19 A. I don't, no.

20 Q. You just don't remember one --

21 A. I don't --

22 Q. -- way or the other; right?

23 A. No.

24 Q. Now if you turn to the end of this document, the  
25 last page that ends with the Bates number 097, it

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1 says, "The meeting endorsed the responsibility  
2 delegated by BAT Industries to BATCo to develop,  
3 agree, and co-ordinate the key strategies for its  
4 tobacco activities, and agreed the exchange of  
5 information necessary to achieve this;" right?

6 A. Correct.

7 Q. All right. And you were among the people who  
8 agreed to that delegated responsibility; right?

9 A. I was at the meeting, yes.

10 Q. All right. Now sir, isn't it true that after  
11 this meeting, documents were reviewed to see whether  
12 they could be rewritten to take out portions which  
13 might be damaging in product-liability lawsuits?

14 MR. McGAAN: Object, lacks foundation.

15 A. I don't know.

16 Q. This has previously been marked as Exhibit 301.

17 Sir, showing you what's previously been marked  
18 as Plaintiffs' Exhibit 301, this is a document that  
19 bears the Bates number 110083832; right?

20 A. Correct.

21 Q. And it is a note that is entitled "RESTRICTED,  
22 NOTES ON GROUP RESEARCH & DEVELOPMENT CONFERENCE,  
23 SYDNEY, MARCH 1978." Right?

24 A. Correct.

25 Q. And this is the minutes of a Group Research &

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1 Development meeting that various BAT Group  
2 representatives from throughout the world attended;  
3 right?

4 A. Well looking at the list of names, they were, as  
5 far as I can see, all members of companies within  
6 B.A.T.

7 Q. All right. The first name on the list is S. J.  
8 Green, who was then head of research and development  
9 for BATCo.

10 A. That's correct.

11 Q. The name J. G. Esterle is there, and he is  
12 currently an R&D employee at Brown & Williamson;  
13 right?

14 MR. McGAAN: Object, calls for speculation.

15 A. He was. I don't know whether he still is.

16 Q. All right. But he's been a Brown & Williamson  
17 employee for a number of years, including the period  
18 of time March 1978; right?

19 A. I believe so.

20 Q. All right. We also see D. G. Felton. That's  
21 Geoff Felton who we were talking about yesterday;  
22 right?

23 A. Correct.

24 Q. R. A. Sanford, he's the Brown & Williamson -- or  
25 he was a Brown & Williamson employee, now retired.

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- 1 A. Correct.
- 2 Q. R. S. Wade, he was a Canadian affiliate
- 3 employee; wasn't he?
- 4 A. I'm not sure. I believe that's correct.
- 5 Q. Now it says in the first paragraph of this
- 6 document, quote, "There has been no change in the
- 7 scientific basis for the case against smoking.
- 8 Additional evidence of smoke-dose related incidence
- 9 of some diseases associated with smoking has been
- 10 published. But generally this has long ceased to be
- 11 an area for scientific controversy." Correct?
- 12 A. That's what it says.
- 13 Q. All right. And it goes on to talk about ICOSI,
- 14 who we learned yesterday turned in to INFOTAB; right?
- 15 A. I believe that's correct, yes.
- 16 Q. All right. Now sir, could you turn to point
- 17 46. Point 46 of Exhibit 301 says, "Cigarettes of
- 18 substantially reduced biological activity can be made
- 19 by product modification and will continue to present
- 20 a range of marketing opportunities. By SRBA is meant
- 21 cigarettes where epidemiology would show no greater
- 22 incidence of disease for smokers than non-smokers;"
- 23 right?
- 24 A. Correct.
- 25 Q. Sir, isn't it true that this document was

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1 rewritten in order to take out those portions that we  
2 have just discussed so it could be sanitized?

3 MR. McGAAN: Object, argumentative, calls  
4 for speculation, lacks foundation.

5 A. I have no knowledge of that.

6 Q. Well sir, are you aware that the document was  
7 rewritten and the points from point number one  
8 concerning the evidence of a smoke-dose related  
9 incidence of some diseases was taken out?

10 A. No.

11 MR. McGAAN: He just answered that  
12 question.

13 Q. Are you aware, sir, that the document was  
14 rewritten so that point 46, which talks about the  
15 fact that it is possible to create a cigarette with a  
16 lower biological activity, was taken out?

17 MR. McGAAN: Object, he just answered that  
18 twice. This is argumentative.

19 A. I have no knowledge.

20 (Plaintiffs' Exhibit 1457 was marked  
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as  
24 Plaintiffs' Exhibit 1457, this is a document that  
25 begins with the Bates number 107468098; right?

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1 A. Correct.

2 Q. And it is, according to its heading, "NOTES ON  
3 GROUP RESEARCH & DEVELOPMENT CONFERENCE, SYDNEY,  
4 1978;" right?

5 A. That's correct.

6 Q. And if we compare the list of people who  
7 attended the conference, we see that -- I'm sorry,  
8 strike that.

9 First of all, was there only one research and  
10 development conference that took place in Sydney in  
11 1978?

12 A. I don't know.

13 Q. You don't know whether there were two; do you?

14 A. I don't.

15 Q. All right. If we compare the list of people who  
16 attended from 301 and the list of people who -- whose  
17 names occur at Exhibit 1457, they're the same; aren't  
18 they?

19 A. Appear to be the same, yes.

20 Q. Would you take a look at note one of Exhibit  
21 1457.

22 Have you read it, sir?

23 A. I have.

24 Q. Doesn't say anything about there being no change  
25 in the scientific basis for the case against smoking;

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1 does it?

2 A. No.

3 Q. Doesn't say that additional evidence of  
4 smoke-dose related incidence of some diseases  
5 associated with smoking has been published; does it?

6 A. No.

7 Q. Doesn't say "But generally this has long since  
8 ceased to be an area for scientific controversy;"  
9 does it?

10 A. No.

11 Q. Doesn't talk in detail about Geoff Felton's  
12 comments about ICOSI; does it?

13 A. No.

14 Q. That information has all been eliminated from  
15 the first point of Exhibit 1457; hasn't it?

16 MR. McGAAN: Object, lacks foundation,  
17 calls for speculation.

18 A. If it's the same meeting, it is different.

19 Q. All right. Sir, would you please read for us  
20 what it says under point one of Exhibit 1457.

21 A. "ICOSI note written by S.J.G. and presumably  
22 containing the comment that passive smoking research  
23 as mooted by ICOSI could be useful in discussion with  
24 'city hall authorities'."

25 Q. Sir, could you turn to point 46 of Exhibit 1457,

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1 and would you please compare it with point 46 of  
2 Exhibit 30 -- 301.

3 Have you done so, sir?

4 A. I have.

5 Q. All right. Do you find anywhere the information  
6 in point 46 that cigarettes of a substantially  
7 reduced biological activity can be made by project  
8 modifications -- product modifications and will  
9 continue to present a range of marketing  
10 opportunities?

11 A. No, I can't.

12 Q. Do you find anything in point 46 of Exhibit 1457  
13 that talks about by SRBA, substantially reduced  
14 biological activity, is meant cigarettes where  
15 epidemiology would show no greater incidence of  
16 disease for smokers than non-smokers?

17 A. No.

18 Q. Do you find anything that says but there remains  
19 a need for credible biological tests to facilitate  
20 development?

21 A. No.

22 Q. Isn't it true that Exhibit 1457 was sanitized in  
23 order to try and prevent the information about it  
24 being possible to create a cigarette with a lower  
25 biological activity from reaching the public?

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1 MR. McGAAN: Object, lacks foundation,  
2 argumentative, calls for speculation. You've been  
3 over this already.

4 You can answer again.

5 A. I -- I have no idea why it is different.

6 Q. Well sir, isn't it a fact that it was because of  
7 litigation in the United States that caused B.A.T  
8 files to be reviewed and documents rewritten?

9 MR. McGAAN: Object to the speech of  
10 counsel. You know the witness doesn't have a basis  
11 to answer that question.

12 MS. WIVELL: I object to your speaking  
13 objection, counsel.

14 MR. McGAAN: There's nothing wrong with  
15 that. We know what you're doing. He's told you  
16 four, five times he doesn't know why these documents  
17 are different. You're just making speeches.  
18 Objection.

19 A. I don't know why they're different.

20 Q. Sir, showing you what's previously been marked  
21 as Plaintiffs' Exhibit 317, this is a letter -- memo  
22 from P. J. Ricketts to all operating group chairmen  
23 and liaison directors concerning legal considerations  
24 in smoking-and-health issues; right?

25 A. That's correct.

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1 Q. And it says, "Recent changes in the law in some  
2 states in the U.S.A. have resulted in a fresh spate  
3 of litigation against the tobacco industry there.  
4 For this reason it is most important that other  
5 members of the Group are constantly aware of B.A.T  
6 Industries' stance on Smoking & Health." Right?

7 A. Correct.

8 Q. Now P. J. Ricketts, he was a B.A.T Industries  
9 employee; wasn't he?

10 A. Yes, he was.

11 Q. He was director of public relations for B.A.T  
12 Industries; wasn't he?

13 A. I'm not sure. I thought he was company  
14 secretary.

15 Q. Ah, thank you.

16 Now he goes on to say, "It would be --

17 "I should be grateful if you would ensure the  
18 widest possible circulation in your Operating Group  
19 of the Group policy on Smoking & Health Issues as  
20 summarised in the attached note;" right?

21 A. Correct.

22 Q. And the attached note is at page two of Exhibit  
23 317; right?

24 A. It is.

25 Q. And it says in part, "The issue is controversial

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1 and there is no case for either condemning or  
2 encouraging smoking;" right?

3 A. I'm sorry, where -- where is that?

4 Q. Second paragraph, sir.

5 A. That's correct.

6 Q. And also goes on to say, "No conclusive  
7 scientific evidence has been advanced and the  
8 statistical association does not amount to proof of  
9 cause and effect. Thus a genuine scientific  
10 controversy exists;" right?

11 A. Correct.

12 MR. McGAAN: Object.

13 THE WITNESS: I'm sorry.

14 MR. McGAAN: Object, it mischaracterizes --

15 As phrased, the question mischaracterizes what  
16 the document goes on to say.

17 Did you get his answer, Dick?

18 THE REPORTER: Yes.

19 MR. McGAAN: Thanks.

20 Q. Now sir, isn't it true that it was well known  
21 throughout the BAT Group that it must exercise care  
22 to ensure that nothing was said or done anywhere in  
23 the world that could jeopardize the BAT Group's  
24 defenses in legal cases in the United States?

25 MR. McGAAN: Lacks foundation, calls for

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1 speculation as phrased.

2 A. I don't know.

3 Q. Sir, showing you what's previously been marked  
4 as Plaintiffs' Exhibit 504, this is a document  
5 bearing the Bates number 107319219; right?

6 A. Mine doesn't have 219.

7 Q. I'm sorry, 216.

8 A. 216.

9 Q. Thank you.

10 And if you take a look at it, it's dated  
11 February 28th, 1985; right?

12 A. That's correct.

13 Q. Now at this time you were a member of the BATCo  
14 board; right?

15 A. That's correct.

16 Q. You also were shortly to become the president of  
17 Brown & Williamson; right?

18 A. No, I was shortly to become, although it was not  
19 known at this time, the chairman of Brown &  
20 Williamson.

21 Q. I'm sorry, I keep trying to change your  
22 position. Let me rephrase the question.

23 And at the time Exhibit 504 was written, you  
24 knew you were going to become the chairman of Brown &  
25 Williamson.

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- 1 A. No, I didn't.
- 2 Q. All right. Well you were shortly to become the
- 3 chairman of Brown & Williamson.
- 4 A. But I didn't know at this time.
- 5 Q. All right. Now sir, would you turn to the
- 6 second page of Exhibit 504 and read from point seven
- 7 on.
- 8 You've had the opportunity to read Exhibit 504
- 9 from point seven on?
- 10 A. I have.
- 11 Q. That says at point seven, "Over the past 18
- 12 months, there has been a substantial increase in law
- 13 suits against the tobacco companies in the USA...;"
- 14 right?
- 15 A. Correct.
- 16 Q. All right. And it talks about two defenses
- 17 which the industry had used; right?
- 18 A. Talks about two defenses that are still
- 19 available to the industry.
- 20 Q. One was lack of proof of causation, and the
- 21 other was voluntary assumption of the risk -- of
- 22 risk, which involved the plaintiff having been made
- 23 aware of the potential risks involved in smoking;
- 24 right?
- 25 A. Correct.

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1 Q. And it says here, "We must continue to exercise  
2 care to ensure that nothing is said or done  
3 inadvertently anywhere in the world which could  
4 jeopardise either of these defences;" right?

5 A. That is correct.

6 Q. And that was a fact that was well known within  
7 the BAT Group; wasn't it?

8 A. I'm not sure.

9 MR. McGAAN: Object, calls for speculation.

10 A. I'm not sure how well known it was.

11 Q. Well you knew it, sir; didn't you?

12 A. I was aware of this issue, yes.

13 Q. All right. And sir, you are aware that --  
14 strike that.

15 There are several initials as authors of this  
16 document listed on its last page.

17 A. Yes, I --

18 Q. The first set of initials is RLOE. Who is that?

19 A. I think that would be Robert Ely.

20 Q. He was of the PR department.

21 A. He was public relations department.

22 Q. And the next set of initials is for Ray  
23 Thornton; right?

24 A. Those are Ray --

25 Same initials that Ray Thornton has, yes.

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- 1 Q. And who is AJ?
- 2 A. I -- I don't know. I can't recall who that is.
- 3 Q. All right. And who is SEM?
- 4 A. The only name I can think of that is close to
- 5 that would be Stuart Massey.
- 6 Q. Massey. And he was in the R&D department at
- 7 BATCo; wasn't he?
- 8 A. I thought he was a blender.
- 9 Q. Do you know --
- 10 A. I -- I can't remember.
- 11 Q. All right.
- 12 A. I thought he was in the blending department.
- 13 Q. Now sir, isn't it true that as a result of the
- 14 concern about legal issues, that scientists in the
- 15 R&D department were instructed to write technical
- 16 reports with an eye to the fact that they might be
- 17 subpoenaed?
- 18 A. I don't believe that is correct. I believe they
- 19 were told to write them with being careful about
- 20 language.
- 21 (Plaintiffs' Exhibit 1458 was marked
- 22 for identification.)
- 23 BY MS. WIVELL:
- 24 Q. Sir, showing you what's been marked as
- 25 Plaintiffs' Exhibit 1458, this is a document that

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1 bears the Bates number 102391375 on its first page;  
2 right?

3 A. Correct.

4 Q. Exhibit 1458 is entitled "R&D AND TECHNICAL  
5 REPORTS;" right?

6 A. That's correct.

7 Q. And it says, "In general, these will contain,"  
8 and then it sets forth information about how to write  
9 a technical report; doesn't it?

10 A. That's what it says here.

11 Q. All right. Would you please turn to the page  
12 that ends with Bates number 380, and under the  
13 third --

14 In the third paragraph, doesn't it say, quote,  
15 "A certain degree of judgement must be used and  
16 authors should be aware of the legal position in the  
17 U.S.A., and the possibility that our reports may be  
18 subpoena-ed?"

19 A. It does.

20 Q. And sir, isn't it true that Brown & Williamson  
21 in the '80s made decisions about whether or not to  
22 participate in Project RIO because of -- or based on  
23 project-liability concerns?

24 A. Not that I'm aware of.

25 Q. Sir, showing you what's previously been marked

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1 as Plaintiffs' Exhibit 320, this is a document that  
2 bears the Bates number 109873975; right?

3 A. Correct.

4 Q. And it is a restricted document concerning a  
5 visit by Dr. Blackman to Brown & Williamson 3-7  
6 October 1983; right?

7 A. Correct.

8 Q. All right. Now if you'd turn to page two -- I'm  
9 sorry, strike that.

10 According to the first page of Exhibit 320, Mr.  
11 Earl Kohnhorst, Lance Reynolds, Mr. Esterle and  
12 Tilford Riehl were present at this meeting with Dr.  
13 Blackman; right?

14 A. That's what it says.

15 Q. All right. Would you turn to the second page  
16 where it talks about Project RIO.

17 Before we talk about the document, Project RIO  
18 was a project instituted by the BAT Group in order to  
19 try and develop a lower biologically active  
20 cigarette; right?

21 A. I --

22 MR. McGAAN: Object, calls for speculation.

23 A. I don't know. I -- I recall the Project RIO  
24 name, but exactly what it was about, I can't  
25 remember.

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1 Q. All right. It says here on page two of Exhibit  
2 320, "B&W are keen to participate in the programme  
3 conceived at the BCAC...."

4 First of all, what's the BCAC?

5 A. I don't know.

6 Q. All right. Just so we're clear, this -- that  
7 statement appears under the heading "Project RIO."  
8 Right?

9 A. It does.

10 Q. All right. And it says, "B&W are keen to  
11 participate in the programme conceived at the BCAC  
12 and further developed at the Research Conference.  
13 They recognize, however, severe legal implications  
14 regarding product liability which have yet to be  
15 resolved by the Lawyers." Right?

16 A. Correct.

17 Q. And it says, "Until guidelines are issued, any  
18 contact between GR&DC and B&W should be by  
19 telephone." Right?

20 A. Correct.

21 Q. Now GR&DC, that's the Group Research &  
22 Development Center at Southampton; right?

23 A. That is correct.

24 Q. And sir, isn't it true that what was being  
25 discussed here was trying to avoid putting anything

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1 in writing that might fall into the hands of lawyers  
2 in product-liability cases?

3 MR. McGAAN: Object, argumentative, calls  
4 for speculation.

5 A. There clearly were --

6 Brown & Williamson had problems, and until this  
7 was resolved, this is how they decided to go ahead, I  
8 presume.

9 Q. And they decided to go at it this way because of  
10 the legal problems; right?

11 A. I don't know.

12 MR. McGAAN: Object, it calls for  
13 speculation.

14 Q. All right. Now do you know if Brown &  
15 Williamson -- strike that.

16 Were Brown & Williamson-marketed cigarettes ever  
17 tested in Project RIO?

18 A. I'm not aware. I don't know.

19 Q. You just don't know one way or the other.

20 A. I just don't know.

21 Q. From the time that you were CEO of Brown &  
22 Williamson, were Project RIO cigarettes ever  
23 tested -- I'm sorry, strike that.

24 From the time that you were CEO of Brown &  
25 Williamson to the time you retired, were Brown &

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1 Williamson-marketed cigarettes, those that are sold  
2 in the United States, ever tested in Project RIO?

3 MR. McGAAN: Object, he just answered that.

4 A. I -- I can't recall.

5 Q. You just don't know one way or the other.

6 A. I just don't.

7 Q. All right. Now one of the things it says here  
8 as two possibilities being considered are, the first  
9 is "Do not assess the biological activity of  
10 commercial US products but use representative  
11 blends;" right?

12 A. That's correct.

13 Q. All right. Well were representative blends that  
14 had substantially similar formulas to those marketed  
15 cigarettes ever tested in Project RIO?

16 A. I don't know.

17 Q. Do you know if -- if cigarettes that had  
18 substantially similar blends to those already  
19 marketed by B&W in the United States were ever tested  
20 by Project RIO during the time that you were CEO of  
21 Brown & Williamson?

22 A. Not that I can remember.

23 Q. All right. Would --

24 Do you believe you would have remembered had  
25 they been tested?

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1 MR. McGAAN: Argumentative, calls for  
2 speculation.

3 A. I --

4 It's been a long time. I wouldn't know.

5 Q. Now sir, you're aware of the fact that in 1984 a  
6 legal conference took place at which lawyers from  
7 B.A.T Industries, British-American Tobacco, Brown &  
8 Williamson, and other BAT Group tobacco companies got  
9 together and talked about legal issues facing the  
10 various group companies.

11 MR. PULTMAN: Object to the form of the  
12 question.

13 A. I don't remember any legal conference in 1984.

14 Q. All right. Well sir, do you remember any  
15 conference where B.A.T Industries' lawyers met with  
16 those from British-American Tobacco and B&W in order  
17 to discuss the implications of the lawsuits in the  
18 United States?

19 A. Not that I'm aware of.

20 (Plaintiffs' Exhibit 1459 was marked  
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as  
24 Plaintiffs' Exhibit 1459, this is a list of delegates  
25 to a 1984 legal conference; right?

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- 1 A. That's what it says.
- 2 Q. All right. And Exhibit 1459, for the record,  
3 has the Bates number 109870747 on the first page;  
4 right?
- 5 A. Correct.
- 6 Q. And according to this list of delegates --  
7 First of all, do you know whether the conference  
8 that's referred to here ever took place?
- 9 A. I don't.
- 10 Q. This list includes representatives from B.A.T  
11 Industries, including P. J. Ricketts; right?
- 12 A. It does.
- 13 Q. Was Ricketts a solicitor?
- 14 A. He was.
- 15 Q. And it also --
- 16 A. I'm sorry, he had been a solicitor.
- 17 Q. All right. Was he a solicitor for B.A.T  
18 Industries?
- 19 A. I don't think he was.
- 20 Q. All right. But R. G. Baker was a solicitor for  
21 B.A.T Industries; wasn't he, sir?
- 22 A. I'm not sure. I think he was.
- 23 Q. The list also includes the names of several  
24 people under the heading "British-American Tobacco  
25 Group." Right?

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- 1 A. That's correct.
- 2 Q. All right. And the first name is H. A. Morini;
- 3 right?
- 4 A. That's correct.
- 5 Q. He was a BATCo solicitor; right?
- 6 A. He was a BATCo solicitor.
- 7 Q. And N. B. Cannar, he was also a BATCo solicitor;
- 8 wasn't he?
- 9 A. I think he was.
- 10 Q. And Miss A. Johnson, that's Anne Johnson; isn't
- 11 it?
- 12 A. That's Anne Johnson.
- 13 Q. And she was a BATCo solicitor; right?
- 14 A. That's right.
- 15 Q. Now sir, you are aware that after -- I'm sorry,
- 16 strike that.
- 17 You are aware that in the late months of 1984,
- 18 procedures were put into place at BATCo to restrict
- 19 the access of information that B&W had; right?
- 20 MR. McGAAN: Object, vague.
- 21 A. Could you rephrase that question, please?
- 22 Q. All right. Well you're aware that in the late
- 23 months of 1984, BATCo put into place procedures to
- 24 restrict sending scientific reports to Brown &
- 25 Williamson.

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1 A. I recall that, yes.

2 Q. You participated in that; didn't you, sir?

3 A. I participated --

4 Well I didn't participate. I was involved in  
5 communicating the Brown & Williamson requirements.

6 Q. All right. And as a matter of fact, you call --  
7 or -- I'm sorry.

8 You helped set up the procedures; didn't you?

9 A. As I recall, I wrote a letter to the person at  
10 R&D advising them of the procedure that Brown &  
11 Williamson wished to follow.

12 Q. All right. Now sir, that procedure was  
13 recommended by the lawyers; wasn't it?

14 A. I don't know who recommended it.

15 Q. Who recommended the procedure to you?

16 A. I think it was a communication from Dr. Hughes.

17 Q. What was your position at the time?

18 A. '84, I was the deputy chairman of BATCo.

19 Q. And you agreed to those procedures; didn't you?

20 A. I agreed to accede to their request, yes.

21 (Plaintiffs' Exhibit 1460 was  
22 marked for identification.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as

25 Plaintiffs' Exhibit 1460, this is a memo that bears

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- 1 the Bates number 107620311; right?
- 2 A. That's correct.
- 3 Q. All right. And it says in the first paragraph,
- 4 "The following procedure has been agreed by Mr.
- 5 Bruell and Mr. Pritchard to cover the circulation of
- 6 ALL scientific documents to organisations outside the
- 7 Group." Right?
- 8 A. It does.
- 9 Q. And just so we're clear, the BAT Group did not
- 10 want its scientific documents available outside the
- 11 group without specific approval; right?
- 12 A. That's correct.
- 13 Q. All right. And it says, "Scientific Documents
- 14 (produced or instigated by GR&DC) should not go
- 15 outside the company to members of the Industry,
- 16 Industry organisations or any public audience until
- 17 all stages of the following procedure has been
- 18 carried out." Right?
- 19 A. That's right.
- 20 Q. And the documents were first to be sent to Ray
- 21 Thornton.
- 22 A. Yes.
- 23 Q. The documents then would be sent to the legal
- 24 department of BATCo.
- 25 A. Correct.

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1 Q. And if they approved, then the five CAC  
2 companies would have to give their approval through  
3 their legal departments.

4 A. Correct.

5 Q. And then the TEC would have to give its  
6 permission after the first three steps had been  
7 carried out; right?

8 A. That's correct.

9 Q. All right. What's the TEC?

10 A. Tobacco Executive Committee.

11 Q. And who was on the Tobacco Executive Committee?

12 A. In 1985, Mr. Bruell, myself, the finance  
13 director, whose name I'm trying to think of, and the  
14 solicitor, who was not Morini at that time. I can't  
15 remember who it was.

16 Q. All right. Was Patrick Sheehy also?

17 A. No.

18 Q. And it says as the -- no, I'm sorry, strike  
19 that.

20 It says, "In the --

21 "As in the past all such documents before going  
22 to outside audiences must be cleared by Legal  
23 Department. Legal Department will, if it thinks  
24 appropriate, seek clearance from:

25 "Brown & Williamson.

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1 "Other CAC companies; and

2 "the TEC;" right?

3 A. That's correct.

4 Q. And that was --

5 That last part, that's just for non-scientific  
6 documents; right?

7 A. That's correct.

8 Q. Now you also were aware of the fact that  
9 procedures were set up to send documents to Brown &  
10 Williamson without them being shown as receiving  
11 them; right?

12 A. Not that I'm aware of.

13 Q. Well you're aware of the fact that documents  
14 were actually sent to Brown & Williamson despite the  
15 fact that the normal recipient at Brown &  
16 Williamson's name was taken off the document; right?

17 A. I can't remember that happening, no.

18 Q. Well do you remember procedures being  
19 established where the recipient's name at Brown &  
20 Williamson would be taken off, and documents would be  
21 sent to an outside lawyer here in Louisville?

22 A. I do.

23 MR. McGAAN: Object, compound.

24 Q. Well let me try and meet counsel's objection.

25 You remember procedures that were established at

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1 the time -- strike that.

2 You remember that in late 1984, procedures were  
3 established whereby Brown & Williamson's name was  
4 taken off certain scientific documents; right?

5 MR. McGAAN: Object, he's answered that.

6 A. I don't remember names being taken off, no.

7 Q. All right. Well do you remember reports being  
8 sent, not to Brown & Williamson, but instead to an  
9 outside lawyer, Robert Maddox?

10 A. I remember the -- the request that documents be  
11 so routed. Whether -- whether any were actually sent  
12 or not, I don't know.

13 Q. Sir, showing you what's been marked as Exhibit  
14 939, this is a document which bears the Bates number  
15 107620309; right?

16 A. That's correct.

17 Q. And it concerns the procedure that was  
18 established in late 1980 -- or early 1985 for R&D  
19 reports to be sent to the United States; right?

20 A. It talks about procedures for sending  
21 information and written material to the U.S.A.

22 Q. Well we're not just talking about information,  
23 we're talking about scientific reports from Group  
24 Research & Development at BATCo; right?

25 A. I said send information and written material.

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1 Q. I'm sorry, I thought you said "in written  
2 material."

3 A. No.

4 Q. Just so we're clear, this procedure applied to  
5 R&D reports that were generated by Group Research &  
6 Development in Southampton.

7 A. That's correct.

8 Q. And it says here that the recipient list must  
9 not contain the name of any B&W person, nor that of  
10 Maddox or his company; right?

11 A. That's correct. That's what it says.

12 Q. Instead, scientific reports were to be sent to  
13 Robert Maddox, Wyatt, Tarrant & Combs, Louisville,  
14 Kentucky; right?

15 A. That's correct.

16 Q. He was Brown & Williamson's outside counsel;  
17 wasn't he?

18 A. I think he was one of the outside counsel.

19 Q. All right. Was he a scientist, sir?

20 A. Not that I know of.

21 Q. Well did he have special scientific training so  
22 that he could interpret scientific documents?

23 A. I wouldn't know.

24 Q. These procedures were carried out; weren't they?

25 A. I don't know whether they were carried out.

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1 Q. Sir, showing you what's previously been marked  
2 as Plaintiffs' Exhibit 938, this is a document  
3 bearing the Bates number 105568064; right?

4 A. That's correct.

5 Q. Would you turn to the second page of the  
6 document. There's a handwritten note that says,  
7 "This report is to be corrected. A copy is to be  
8 sent out to J. G. Esterle, B&W, but nothing to be on  
9 the Distribution List per B&W, as it is a sensitive  
10 report." Right?

11 A. That's what it says here.

12 Q. It would appear that this document was sent out  
13 pursuant to those procedures; right?

14 MR. McGAAN: Object, it calls for  
15 speculation.

16 A. It looks that if that's correct.

17 Q. All right. By the way, the name of this  
18 document is "NITROSAMINE LEVELS IN THE TOBACCO OF  
19 U.S.A. CIGARETTE BRANDS;" right?

20 A. I haven't found it yet.

21 Correct.

22 Q. All right. And if you turn to the page that  
23 bears the Bates number 69 as its ending number, we  
24 see that Robert Sanford's name is conspicuous by its  
25 absence; right?

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1 MR. McGAAN: Object, argumentative.

2 A. It's not there.

3 Q. It's not there.

4 And there is no name of anyone at Brown &  
5 Williamson on this document; is there, sir?

6 A. Not that I can see.

7 Q. Sir, showing you what's previously been marked  
8 as Plaintiffs' Exhibit 482, this is a document  
9 bearing the Bates number 105530759; right?

10 A. That's correct.

11 Q. And if you'd turn to the second page of this  
12 document, there is also a handwritten note; right?

13 A. That's correct.

14 Q. And it says, in part, "NOTE: B&W not to be  
15 shown on circulation list;" right?

16 A. It does.

17 Q. Now if we look at the page that -- of Exhibit  
18 482 that ends with Bates number 764, we see that the  
19 name of this report is "SIDESTREAM NITROSAMINE  
20 DELIVERIES FROM UREA TREATED TOBACCOS;" right?

21 A. Correct.

22 Q. Now sir, you know that nitrosamines are  
23 carcinogens; right?

24 MR. McGAAN: Object, lacks foundation.

25 A. I don't --

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1 I'm not sure. I'm not a chemist.

2 Q. Could you take a look at the distribution list  
3 that appears on that page of Exhibit 482. Is there  
4 any name there of any person from Brown & Williamson?

5 A. Not that I can see.

6 Q. Appears this document was sent out pursuant to  
7 those procedures that were established; doesn't it?

8 MR. McGAAN: Object, calls for speculation  
9 on two levels.

10 A. Brown & Williamson doesn't appear on it.

11 Q. You would agree it appears that this document  
12 was sent out pursuant to the procedures that were in  
13 place in 1984 for circulating documents from R&D;  
14 right?

15 MR. McGAAN: Object, calls for speculation  
16 based on his prior testimony.

17 A. It shows the people that received it. Doesn't  
18 say whether Brown & Williamson received a copy or  
19 copies other than the names that are listed here.

20 Q. By the way, this document is -- I'm sorry,  
21 strike that.

22 This report is date -- dated November 13th,  
23 1984; isn't it, sir?

24 A. That's correct.

25 Q. You don't know whether Brown & Williamson

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1 received a copy of Exhibit 482; do you?

2 A. No, I don't.

3 Q. Sir, isn't it true that a biological conference  
4 occurred during 1984 that was attended by Brown &  
5 Williamson employees, but their names were taken off  
6 the distribution list?

7 A. I don't know.

8 (Plaintiffs' Exhibit 1461 was marked  
9 for identification.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as  
12 Plaintiffs' Exhibit 1461, this is the report of a  
13 biological conference that occurred in Southampton  
14 the 9th to 11th of April of 1984; right?

15 A. That's what it says.

16 Q. All right. And if you look down at the  
17 distribution list, after the name of Dr. C. J. P. de  
18 Siqueira there's a hole; isn't there?

19 A. There's a gap.

20 Q. There is a gap. And that's where the B&W  
21 participant's name would have gone; isn't it, sir?

22 A. I don't know.

23 Q. Well now, sir, can you explain to me why a list  
24 of delegates that doesn't have anyone from  
25 Southampton -- I'm sorry, strike that.

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1           Would you turn to page two of Exhibit 1461.  
2   There is a list of delegates; right?  
3   A.   That's correct.  
4   Q.   Doesn't list anybody from B&W.  
5   A.   It doesn't.  
6   Q.   It does?  
7   A.   It doesn't.  
8   Q.   Oh, I'm sorry. I have a hearing problem, so  
9   sometimes forgive me.  
10   A.   I'm sorry.  
11   Q.   Just so we're clear, the list does not include  
12   anyone from B&W; does it?  
13   A.   It does not.  
14   Q.   Does not include anyone from Louisville.  
15   A.   Does not.  
16   Q.   All right. However, if you look at the --  
17   I'm -- strike that.  
18           The conference agenda is listed beginning on the  
19   third page of Exhibit 1461; right?  
20   A.   It would appear to be an agenda. It doesn't say  
21   so at the top.  
22   Q.   And it lists the sessions that were going to  
23   take place on the left and then the location of the  
24   company who was going to present or give the  
25   presentation; right?

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1 MR. McGAAN: Object, calls for speculation.

2 A. I don't know. It just gives the place name.

3 Q. All right. And it says "Louisville" under

4 "SESSION V;" doesn't it?

5 A. It says "Louisville/Southampton."

6 Q. And isn't it a fact that representatives from

7 Brown & Williamson attended this conference but their

8 names were taken off?

9 MR. McGAAN: Lacks foundation. That's

10 where you started.

11 A. I don't know.

12 Q. Can you explain why it appears that a

13 presentation was given under Session V by someone

14 from Louisville?

15 MR. McGAAN: Let me object. He just

16 testified that it doesn't appear that way to him.

17 That's unfair. Calls for speculation.

18 A. I don't know.

19 Q. All right.

20 A. It may have been a paper presented on behalf of

21 Louisville. I have really no way of knowing.

22 Q. Sir, isn't it true that Project RIO was

23 discussed at this conference?

24 A. It appears on this, if this is the agenda.

25 Q. And isn't it true that people from Louisville

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1 actually attended this conference, but because of the  
2 information about Project RIO and the concern about  
3 product-liability implications, that they weren't  
4 shown as attendees --

5 MR. McGAAN: Object.

6 Q. -- or recipients of the document?

7 MR. McGAAN: Object, compound,  
8 argumentative.

9 A. I have no way of knowing.

10 Q. All right. Well let me try and rephrase the  
11 question.

12 Isn't it true that people from Louisville  
13 actually attended this conference, but because of  
14 product-liability implications, they were not shown  
15 as attendees?

16 A. I wouldn't know.

17 Q. Isn't it true that people from Louisville  
18 actually attended this conference, and because of  
19 product-liability concerns on Project RIO, that they  
20 were not shown as being recipients of the final  
21 report?

22 MR. McGAAN: Object, lacks foundation.  
23 You're just making speeches. You know he doesn't  
24 have a basis to testify about what occurred at a  
25 conference he didn't attend.

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1 A. I don't know.

2 Q. You were on the BATCo board at the time this  
3 conference took place; right?

4 A. I was.

5 MR. McGAAN: Objection, argumentative.

6 That's been established --

7 MS. WIVELL: Why don't we take a break.

8 MR. McGAAN: -- over and over.

9 THE REPORTER: Off the record, please.

10 (Recess taken.)

11 BY MS. WIVELL:

12 Q. Sir, isn't it true that Brown & Williamson had,  
13 even before 1984, made it clear to people at BATCo  
14 that they had to be sensitive about what they wrote  
15 in scientific reports?

16 MR. McGAAN: Lacks foundation.

17 A. Not that I'm aware of. Not that I can recall.

18 Q. Sir, would you --

19 I have now had the court reporter hand you  
20 Exhibit 937; right?

21 A. That's correct.

22 Q. This is Bates numbered 107469003; right?

23 A. Correct. Correct.

24 Q. This is a report of a visit that Dr. Blackman  
25 made to Montreal and to Brown & Williamson in July of

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1 1979; right?

2 A. That's what it says.

3 Q. All right. And it says under point one, "Both  
4 B.&W. and I.T.L. made it clear that GR&DC will be  
5 supported positively in the future provided attention  
6 is given to a number of points;" right?

7 A. That's correct.

8 Q. And the last of those points on the first page  
9 is, "We become more, quote, politically sensitive,  
10 quote, in the areas of smoking and health, e.g.,  
11 reporting of 'nasties' and biological studies  
12 generally. ('Remember what pays all our  
13 salaries.');" right?

14 A. That's correct.

15 Q. Sir, is it your testimony you were not aware of  
16 the fact that BATCo scientists had to be politically  
17 sensitive about what they said in reports that they  
18 wrote?

19 MR. McGAAN: Object, mischaracterizes the  
20 prior testimony.

21 A. Not that I can recall.

22 Q. You don't recall this ever being a subject of  
23 conversation on the BATCo board?

24 A. Not that I can remember. Okay.

25 Q. Okay. Could have been, you just might not

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1 remember.

2 A. Could have been, I just might not remember.

3 Q. Now sir, are you aware that lawyers directed  
4 what should or should not be placed in scientific  
5 documents?

6 MR. McGAAN: Object, it calls for  
7 speculation, assumes facts not in evidence.

8 A. I'm not aware.

9 Q. Yesterday we talked about the blue book; didn't  
10 we?

11 Q. Blue book.

12 Q. Do you recall what the blue book was?

13 A. No, I don't.

14 Q. All right. You know who Kendrick Wells is.

15 A. I know who Kendrick Wells is.

16 Q. He's an in-house attorney at Brown & Williamson.

17 A. That's correct.

18 Q. And he has been for a number of years; hasn't  
19 he?

20 A. I believe so.

21 Q. Showing you what's been previously marked as  
22 Plaintiffs' Exhibit 550, this document bears the  
23 Bates number 109840698; right?

24 A. That's correct.

25 Q. And it's notes of a meeting on the tobacco

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1 research -- I'm sorry, strike that.

2 It's notes of a meeting of the tobacco company  
3 research directors that were held -- that was held in  
4 February of 1983; right?

5 A. That's what it says.

6 Q. All right. And included in this were not just  
7 BAT Group representatives, but also representatives  
8 from Philip Morris; right?

9 A. Correct.

10 Q. From Gallahers, which is an English tobacco  
11 company; right?

12 A. That's correct.

13 Q. And Rothmans, which is another English tobacco  
14 company; right?

15 A. It's a -- it's part of a group, but it is a --  
16 There is a Rothman's company in Britain.

17 Q. All right. And Dr. Blackman attended on behalf  
18 of B.A.T; right?

19 A. That's what it says, yes.

20 Q. Now Dr. Blackman wrote these -- I'm sorry,  
21 strike that.

22 Dr. Blackman wrote Exhibit 550 after he attended  
23 this conference.

24 A. I don't know.

25 Q. His name appears at the end; doesn't it?

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- 1 A. His name appears at the end.
- 2 Q. That typically means he wrote it.
- 3 A. That's correct.
- 4 Q. Now sir, would you turn to the heading
- 5 "Compensatory smoking" that ends on page 700. There
- 6 in the last sentence of the last paragraph it says,
- 7 "Kendrick-Wells is so concerned with compensation
- 8 that he advises no reference is made in the revised
- 9 Blue Book." Right?
- 10 A. That's what it says.
- 11 Q. All right. And what's being discussed here is
- 12 literature concerning the subject of cigarette smoker
- 13 compensation; right?
- 14 MR. McGAAN: Object, vague, calls for
- 15 speculation.
- 16 A. It refers to compensation, yes.
- 17 Q. All right. You understand compensation is what
- 18 happens when cigarette smokers who buy low tar/low
- 19 nicotine delivery products actually in some way
- 20 change their smoking habits to obtain higher
- 21 tar/nicotine deliveries; right?
- 22 A. That would be one form of compensation.
- 23 Q. All right. Do you know why Kendrick Wells was
- 24 so concerned about compensation that he advised no
- 25 reference being made in the revised blue book?

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1 A. No, I don't.

2 Q. Sir, are you aware of the fact that work on  
3 mutagenicity of certain types of older cigarettes was  
4 considered to be -- was considered by BATCo  
5 scientists?

6 A. No.

7 Q. Are you aware of a meeting that Mr. Massey had  
8 along with Ray Thornton to discuss a project on the  
9 mutagenicity of vintage cigarettes with a Dr. Wald  
10 and a Professor Bridges?

11 A. I'm sorry, what type of cigarette?

12 Q. "Vintage." Older cigarettes.

13 A. No, I'm not.

14 Q. Well are you aware of the view that work should  
15 be done outside GR&DC scientific work because, if  
16 adverse results occurred, they would not be  
17 associated with B.A.T?

18 MR. McGAAN: Object, vague and compound,  
19 calls for speculation.

20 A. I'm not aware of that.

21 Q. Well just so we're clear, the -- the GR&DC  
22 facilities that were at the Southampton research labs  
23 in the early '80s were quite advanced; weren't they?

24 MR. McGAAN: Object, vague.

25 A. I believe so.

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1 Q. They -- strike that.

2 Those labs had very sophisticated technical  
3 equipment; didn't they?

4 A. I believe so.

5 Q. And as a member of the BATCo board, you had  
6 confidence in the quality of the scientific work that  
7 was done at GR&DC; didn't you?

8 A. I believe so.

9 Q. Now sir, isn't it true that BATCo scientists in  
10 this period, in the early '80s, decided not to do  
11 in-house work so that if adverse results occurred,  
12 they wouldn't be associated with the BAT Group?

13 A. Not --

14 MR. McGAAN: Object, calls for speculation,  
15 it's vague, assumes facts that are not in evidence.

16 A. Not that I'm aware of.

17 (Discussion off the stenographic record.)

18 THE REPORTER: Off the record, please.

19 (Discussion off the record.)

20 (Plaintiffs' Exhibit 1462 was marked  
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as  
24 Plaintiffs' Exhibit 1462, this is a document that  
25 bears the Bates number 100436619; right?

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1 A. Correct.

2 Q. And it is a report of a meeting with Dr. N. Wald  
3 and Professor B. A. Bridges on Monday, 21st February,  
4 1983, "MUTAGENICITY OF 'VINTAGE' CIGARETTES;" right?

5 A. Correct.

6 Q. And the document is dated March 22nd, 1983.

7 A. Correct.

8 Q. Right?

9 Would you take a moment and read the first page.

10 You're done, sir?

11 A. I have read the first page.

12 Q. All right. According to the information that's  
13 given on the first page of Exhibit 1462, a Dr. Wald  
14 had a collection of cigarettes manufactured between  
15 1930 and 1983; right?

16 A. That's what it says.

17 Q. And he was interested in investigating the  
18 biological activity of these cigarettes by mouse  
19 skin-painting; right?

20 A. That's what it says.

21 Q. Now -- (coughing) pardon me -- it says in the  
22 second paragraph, "Considering the importance of the  
23 vintage cigarette collection Professor Bridges  
24 considered that it was not only important to compare  
25 mutagenicities of carcinates, but also to investigate

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1 the various components responsible for the mutagenic  
2 activity." Right?  
3 A. You mispronounced a word there.  
4 Q. Not surprising. But otherwise --  
5 A. "Condensates."  
6 Q. "Condensates." But otherwise I read that  
7 correctly.  
8 A. You did indeed.  
9 Q. Now in other words, Dr. Wald proposed doing a  
10 study looking at the biological activity of these  
11 cigarettes; right?  
12 A. That's what it would appear to be.  
13 Q. And Professor Bridges considered that to be an  
14 important experiment; right?  
15 A. That's what it says.  
16 Q. Now Professor Bridges was a BATCo scientific  
17 consultant; wasn't he?  
18 A. I don't know. That's the first time I've ever  
19 seen the name.  
20 Q. All right. Now sir, would you turn to the top  
21 of page three. There it says, "By supporting this  
22 work outside GR&DC, should adverse results ensue then  
23 publication would not be associated with BAT;"  
24 doesn't it?  
25 A. That's what it says.

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1 Q. Sir, was the work ever done?

2 A. I don't know.

3 Q. Was the work ever done in GR&DC?

4 A. I don't know.

5 Q. Well it's clear, you would agree, that GR&DC did  
6 have the capability to do mouse skin-painting tests  
7 in-house; right?

8 MR. McGAAN: Object, lacks foundation.

9 A. I'm not sure whether it did or not.

10 Q. You've toured the -- you had -- strike that.

11 You had toured the Southampton research  
12 facilities; right?

13 A. I -- I did, yes.

14 Q. And you saw that there they had the capabilities  
15 to do animal work; right?

16 A. I saw they had animals there. What the  
17 capabilities were with those animals, I don't know.

18 Q. All right. But they were, as best you  
19 understood it, doing animal research at the GR&DC  
20 laboratories in Southampton when you toured it.

21 A. That's correct.

22 Q. When did you tour it?

23 A. It was about 1982, '83.

24 Q. All right. Right about the period that this  
25 particular document, Exhibit 1462, was written;

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1 right?

2 A. That's correct.

3 Q. Now sir, isn't it true that in early 1985 it was  
4 determined to shut down the biological research that  
5 was being done at GR&DC?

6 A. I think as part of the reorganization of GR&DC,  
7 there was a recommendation that the animal work be  
8 closed down.

9 Q. Yes. All animal work was stopped and future  
10 studies were going to be done externally; right?

11 A. I don't know whether it actually happened  
12 because I left shortly after that, so I don't know  
13 what -- what the outcome was.

14 Q. Sir, showing you what's previously been marked  
15 as Plaintiffs' Exhibit 701, this is a document that  
16 bears the Bates number 301122597; right?

17 A. Correct.

18 Q. And it is a document which you've seen before;  
19 isn't that true?

20 A. I'm not sure. I may have done.

21 Q. All right. This document concerns that  
22 reorganization of the research facilities at GR&DC;  
23 doesn't it?

24 A. It talks about tobacco research in B.A.T  
25 Industries.

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1 Q. All right. And -- and it also talks about the  
2 reorganization of the research facility at  
3 Southampton; doesn't it?

4 A. Can you point it out to me? I can't --

5 Q. All right. Well why don't you take a moment and  
6 look through the document.

7 I'm only going to be asking questions,  
8 essentially, about the first two pages.

9 A. Okay. All right.

10 Q. And the page that ends with Bates number 607.

11 A. 607.

12 Q. Yes, sir.

13 Now sir, you've had the opportunity to read  
14 those pages out of Exhibit 701; right?

15 A. I have, yes.

16 Q. All right. This document concerns the  
17 reorganization of the BATCO Group research and  
18 development facility at Southampton; doesn't it?

19 A. That's correct.

20 Q. Now before 1985, before this reorganization,  
21 that facility was owned by BATCo; wasn't it?

22 A. That's correct.

23 Q. And it had been since the time it was built.

24 A. That's correct.

25 Q. Now in 1985 it was decided that that facility

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- 1 would be transferred to the control of BATUKE; right?
- 2 A. That's correct.
- 3 Q. You were on the B.A.T board at the time of the
- 4 reorganization.
- 5 A. At the time of the proposal.
- 6 Q. All right. And the BATCo board approved that
- 7 reorganization; didn't it?
- 8 A. It did.
- 9 Q. So you took part in that decision.
- 10 A. Well this paper was in April, and this was a
- 11 draft. I'm not sure whether the actual decision was
- 12 taken whilst I was still there or not, but I -- I was
- 13 involved in discussions.
- 14 Q. And did you understand that all in-house animal
- 15 work was to cease and that future studies involving
- 16 animals would be done externally under contract?
- 17 A. That was the proposal that was made.
- 18 Q. And that proposal was actually carried out;
- 19 wasn't it, sir?
- 20 A. I don't know because I left.
- 21 Q. All right. When you say "left," you -- you
- 22 didn't leave the BAT Group companies, you went --
- 23 A. I came over to Brown & Williamson.
- 24 Q. That's right. Came to the States.
- 25 A. Right. Came to the States.

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- 1 Q. Okay. Now it says here that -- and this is on  
2 page 607 -- smoke research would receive more  
3 resources; right?
- 4 A. It talks of the bulk of the program being  
5 retained --
- 6 Q. All right.
- 7 A. -- but the emphasis be more product oriented.
- 8 Q. "The bulk of the product" meaning smoking --  
9 smoke research; right?
- 10 A. Smoke research, that's correct.
- 11 Q. As opposed to biological research which was  
12 being reduced.
- 13 A. That's correct.
- 14 Q. Now more resources were going to be provided for  
15 research into areas including enhancing nicotine  
16 transfer to smoke; right?
- 17 A. That's what it says.
- 18 Q. All right. And in fact, you understood that  
19 more resources were intended to be given to the area  
20 of enhancing nicotine transfer; right?
- 21 A. That was the intention.
- 22 Q. Now sir, also it was the intention to provide  
23 more resources concerning the enhancement of nicotine  
24 in cigarette smoke; right?
- 25 A. Enhancing nicotine transfer to smoke together

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1 with the experimental combustion research --

2 Q. All right.

3 A. -- and cigarette paper effects.

4 Q. And you understand from your continuing  
5 involvement with BAT Group activities that there was  
6 an increase in efforts to enhance nicotine transfer  
7 in smoke; right?

8 A. I'm not sure.

9 Q. Now you understand that the reorganization that  
10 is referred to in Exhibit 701 actually took place;  
11 didn't it?

12 A. I believe it did.

13 Q. All right. And as a result of that  
14 reorganization, smoking-and-health research was done  
15 outside of BAT Group facilities; wasn't it?

16 MR. McGAAN: Object, mischaracterizes the  
17 document.

18 A. I'm not sure.

19 Q. Well that's what it means when it talks about  
20 the work being done externally; doesn't it?

21 MR. McGAAN: Object, mischaracterizes the  
22 document.

23 A. It does --

24 I can't find out where it says that.

25 Q. Well in Exhibit 701 on page 607 at the top of

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1 the page it says, under the heading "Biological  
2 Research," quote, "All in-house animal work will  
3 cease and future studies involving animals will be  
4 done externally under contract." That means outside  
5 of --

6 A. That -- that's correct.

7 Q. Okay. In other words, that means outside of the  
8 BAT Group research facilities; right?

9 A. But you --

10 When you asked the question, you said  
11 smoking-and-health research would be done outside.

12 Q. Well sir, isn't it a fact that  
13 smoking-and-health research was, as a result of this  
14 reorganization, done externally?

15 A. Does not say that.

16 MR. McGAAN: Object, mischaracterizes the  
17 document.

18 (Plaintiffs' Exhibit 1463 was marked  
19 for identification.)

20 BY MS. WIVELL:

21 Q. Sir, showing you what's been marked as  
22 Plaintiffs' Exhibit 1463, this is a document that  
23 bears the Bates number 109870277 on its first page;  
24 right?

25 A. That's correct.

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1 Q. It's entitled "Rationale for R&D."

2 A. That's correct.

3 Q. If we turn to the last page, we see that it was  
4 written by Alan Heard and dated October 29th, 1985.

5 A. That's correct.

6 Q. The second-to-the-last paragraph -- I'm sorry.  
7 Strike that.

8 The last page bears the heading "SMOKING AND  
9 HEALTH RESEARCH." Right?

10 A. It does.

11 Q. And in the second-to-the-last paragraph it says,  
12 "So far as the remainder of the programme is  
13 concerned, research will be carried out externally by  
14 using the facilities of the leading research groups  
15 in universities, medical departments and institutes,  
16 to investigate the various claims made against the  
17 product." Right?

18 A. That's what it says.

19 Q. And sir, isn't it a fact that after the  
20 reorganization of Group Research & Development that's  
21 been referred to in Exhibit 701 and is referred to  
22 here in Exhibit 1463, that BAT Group research in the  
23 area of smoking and health was carried out  
24 externally?

25 MR. McGAAN: Object, mischaracterizes both

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1 documents.

2 A. I have no knowledge of that.

3 Q. Do you have -- strike that.

4 By the way, Alan Heard was directly involved in  
5 this reorganization; wasn't he?

6 A. He was.

7 Q. He was responsible for implementing it; wasn't  
8 he?

9 A. I believe he was.

10 Q. All right. Do you have any information that  
11 would contradict what Mr. Heard said here in the  
12 second-to-the-last paragraph of Exhibit 1463?

13 A. No, I don't.

14 Q. Sir, isn't it a fact that Group Research &  
15 Development -- strike that.

16 Isn't it a fact that biological research was  
17 terminated at Group Research & Development at  
18 Southampton because of the fear that adverse results  
19 would be associated with B.A.T?

20 A. I have no --

21 MR. McGAAN: Object, mischaracterizes the  
22 document.

23 A. I have no knowledge of that.

24 Q. Now sir, after the Group Research & Development  
25 reorganization took place, a coordinated B.A.T

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1 Industries/BATCo R&D program was agreed; wasn't it?

2 A. A coordinated B.A.T program was agreed?

3 Q. That --

4 Yes, sir.

5 A. I --

6 MR. McGAAN: Do you understand the  
7 question?

8 THE WITNESS: I don't understand the  
9 question.

10 MR. McGAAN: I think -- I think he just got  
11 confused.

12 Q. All right. Could you turn back to Exhibit 701,  
13 please. There on the first page --

14 MR. McGAAN: No, it's --

15 THE WITNESS: Wait, wait, I've got --  
16 701.

17 MS. WIVELL: There you go. Sorry.

18 THE WITNESS: Right.

19 MS. WIVELL: My apologies.

20 Q. On the first page of Exhibit 701, right above  
21 the statement "The work of R&D centres will be  
22 divided into," do you see reference to "A  
23 comprehensive, co-ordinated BAT Industries/BATCo R&D  
24 programme will be agreed with the CAC companies by  
25 end 1985 and made available to the Tobacco Strategy

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1 Review Team?"

2 A. I do.

3 Q. All right.

4 A. That's correct.

5 Q. That statement is correct.

6 A. Well that's the statement.

7 Q. All right. Well sir, isn't it true that a

8 coordinated B.A.T Industries/BATCo R&D program was

9 agreed and discussed by the Tobacco Strategy Review

10 Team?

11 A. I don't remember, but it may have been.

12 Q. Now you became a member of the Tobacco Strategy

13 Review Team; didn't you, sir?

14 A. Yes, I did.

15 Q. All right. And you were the BATUS

16 representative; weren't you?

17 A. No, I was not.

18 Q. What --

19 Who did you represent?

20 A. I represented Brown & Williamson.

21 Q. Okay.

22 (Discussion off the stenographic record.)

23 Q. I'd like to talk for a little bit about the

24 Tobacco Strategy Review Team. The Tobacco Strategy

25 Review Teams were set up by the B.A.T Industries

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1 board; weren't they?

2 A. That's correct.

3 Q. All right. And the board set up strategy review  
4 teams for each of the BAT Group's major industrial  
5 activities; didn't it?

6 A. I'm only familiar with the Tobacco Strategy  
7 Team.

8 (Plaintiffs' Exhibit 1464 was marked  
9 for identification.)

10 BY MS. WIVELL:

11 Q. Sir, showing you what's been marked as  
12 Plaintiffs' Exhibit 1464, this is a document Bates  
13 numbered 483100380; right?

14 A. Correct.

15 Q. And it concerns the Tobacco Strategy Review  
16 Team; doesn't it?

17 A. That's what the heading is.

18 Q. You've seen this document before; haven't you?

19 A. I probably have, but I don't remember it.

20 Q. All right. And it says in the second paragraph  
21 that "...the Board set up Strategy Review Teams for  
22 each of the Group's major industrial activities;"  
23 right?

24 A. I'm sorry, I -- where -- where --

25 Q. I'll rephrase the question.

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1           According to this document, the B.A.T Industries  
2 board set up strategy review teams for each of the  
3 group's major industrial activities; right?  
4 A.    That's what it says here.  
5 Q.    Yes.  
6 A.    I'm sorry.  
7 Q.    You have no reason to disbelieve that; do you?  
8 A.    No.  
9 Q.    Now this document says, "The main reporting  
10 lines in the Group are between B.A.T Industries and  
11 the Operating Groups and the objectives and  
12 strategies are normally agreed through discussions  
13 between the CPC and the Operating Group concerned;"  
14 right?  
15 A.    Correct.  
16 Q.    All right. Let's talk about the CPC. What's  
17 that?  
18 A.    Chairman's Policy Committee.  
19 Q.    Who makes up the CPC?  
20 A.    At this time --  
21 Q.    Yes, sir.  
22 A.    -- in 1988?  
23 Q.    Yes, sir.  
24 A.    Sir Patrick Sheehy, Mr. Garraway and Mr. Bruell.  
25 Q.    They were all B.A.T Industries board members;

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- 1 weren't they?
- 2 A. They were all B.A.T Industries board members.
- 3 Q. All right. Now it refers here to the operating
- 4 group. "The operating group" refers to what, sir?
- 5 A. The operating groups were the various holding
- 6 companies; the U.S. was BATUS, which was responsible
- 7 for the B.A.T holdings in the United States which
- 8 included Appleton Paper and the various department
- 9 stores and Brown & Williamson; it included Souza Cruz
- 10 Industrio e Commercio in Brazil which owned Souza
- 11 Cruz Company -- sorry, Cia de Cigarros Souza Cruz,
- 12 paper mills, fruit-juice mills, factories and so on;
- 13 and Canada; and Germany; and Australia.
- 14 Q. Now sir, it says in the next paragraph, "There
- 15 are, however, a number of strategic issues which
- 16 involve more than one Operating Group and in order to
- 17 discuss and progress these issues the Board set up
- 18 Strategy Review Teams for each of the Group's major
- 19 industrial activities." Right?
- 20 A. That's what it says.
- 21 Q. In other words, because there were strategic
- 22 issues which involved all of its tobacco companies,
- 23 it set up a Tobacco Strategy Review Team; right?
- 24 A. That's right.
- 25 Q. All right. And originally the Tobacco Strategy

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1 Review Team included only the chair of B.A.T  
2 Industries and the B.A.T board member -- I'm sorry.  
3 Strike that.

4 Originally the Tobacco Strategy Review Team only  
5 included the chair of B.A.T Industries and the B.A.T  
6 board members most -- who had the most responsibility  
7 for the various -- for that operating group; right?

8 A. No.

9 MR. PULTMAN: Object to the form.

10 Q. You said no?

11 A. I said no.

12 Q. Okay.

13 MR. McGAAN: You said --

14 I keep reminding you, just pause because there  
15 might be an objection.

16 THE WITNESS: I'm sorry.

17 Q. Okay. Originally there were only three members  
18 of the Tobacco Strategy Review Team; right?

19 A. I don't think so. I thought --

20 MR. McGAAN: Well wait. Let's wait for the  
21 next question.

22 Q. Now in 1988, at the time Exhibit 1464 was  
23 written, the team was expanded; right?

24 A. That's correct.

25 Q. And you were added as a member of that team --

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1 A. I was.

2 Q. -- in 1988; right?

3 A. Yes, that's correct.

4 Q. And it says here that you were added as a  
5 representative of BATUS, BATUS.

6 MR. McGAAN: She's looking at the bottom  
7 paragraph.

8 A. Yes.

9 Q. But you really acted in your capacity as B&W's  
10 representative on the team; didn't you?

11 A. That's correct.

12 Q. Sir, who in 1990 was BATCo chairman?

13 A. 1990?

14 Q. Yes.

15 A. Mr. Bramley.

16 Q. All right.

17 (Plaintiffs' Exhibit 1465 was marked  
18 for identification.)

19 BY MS. WIVELL:

20 Q. Sir, showing you what's been marked as  
21 Plaintiffs' Exhibit 1465, this is a talk to the MD --  
22 I'm sorry.

23 Showing you what's been marked as Plaintiffs'  
24 Exhibit 1465, this document begins with the Bates  
25 number 502619006; right?

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- 1 A. Correct.
- 2 Q. And it says at the top that Exhibit 1465 is a
- 3 talk to the M -- the TMDP - Chelwood - August 1990;
- 4 right?
- 5 A. That's correct.
- 6 Q. Now at the bottom it says, "On these matters I
- 7 want to share my views with you from the perspective
- 8 of a BAT Industries Board member as well as that of
- 9 BATCo Chairman." Do you see that?
- 10 A. I do.
- 11 Q. Now I don't find a name on this document, but
- 12 according to your testimony, Mr. Bramley was the
- 13 BATCo chairman in 1990; is that right?
- 14 A. I am pretty certain he was.
- 15 Q. All right. So it would be fair, then, to say
- 16 that this is probably his presentation?
- 17 A. I would assume so.
- 18 Q. Would you turn to page -- the page that ends
- 19 with 009. There is a heading entitled "ORGANISATION
- 20 OF BAT'S TOBACCO INTERESTS;" right?
- 21 A. Correct.
- 22 Q. Would you please read to yourself what it says
- 23 under that heading?
- 24 You've read it, sir?
- 25 A. Uh-huh.

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1 Q. You have to answer out loud.

2 A. I did.

3 Q. Thank you.

4 Now here Mr. Bramley talks about the Tobacco  
5 Strategy Review Team; doesn't he?

6 A. He does.

7 Q. And he says it "is the mechanism within BAT  
8 Industries for initiating, co-ordinating and  
9 monitoring major strategy changes..." right?

10 A. That's what it says.

11 Q. And you understand that that was one of the  
12 purposes of the B.A.T Industries strategy review  
13 team; right?

14 MR. PULTMAN: Object to the form --

15 Q. I'm sorry, strike that.

16 You understand that that was one of the purposes  
17 of the B.A.T Industries Tobacco Strategy Review Team;  
18 right?

19 MR. PULTMAN: Object to the form of the  
20 question, no foundation.

21 A. It was a forum for exchanging views and devising  
22 strategies.

23 Q. All right. The information that Mr. Bramley  
24 gives here in Exhibit 1465 is correct; isn't it?

25 MR. McGAAN: Object, vague as to precisely

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1 what you're referring to. It's a large exhibit.

2 MS. WIVELL: Well I'll try -- yeah, I'll  
3 try and make it better. I'm sorry.

4 MR. McGAAN: Go ahead.

5 MS. WIVELL: All right.

6 Q. The information which Mr. Bramley gives here on  
7 the fourth page of Exhibit 1465 concerning the  
8 Tobacco Strategy Review Team is correct; isn't it,  
9 sir?

10 A. I think Mr. Bramley has probably overstated it a  
11 little bit when he refers to the team being the link  
12 between BATCo and the other tobacco interests of  
13 B.A.T.

14 Q. Apart from that, he's correctly described the  
15 activities of the Tobacco Strategy Review Team;  
16 hasn't he, sir?

17 A. In general, yes.

18 Q. But at least --

19 Bramley was a member of the Tobacco Strategy  
20 Review Team; wasn't he?

21 A. He was.

22 Q. Now sir, he goes on to say, "The Tobacco  
23 Strategy Review Team provides the link between BATCo  
24 and other tobacco interests of BAT." Now you would  
25 agree that it did provide a link; didn't it?

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1 A. It --

2 MR. McGAAN: Object, mischaracterizes the  
3 testimony.

4 Go ahead.

5 A. The link was between all of us. We were equal  
6 participants.

7 Q. Fair enough. So the Tobacco Strategy Review  
8 Team was one way in which the chain of companies  
9 worked together; right?

10 MR. McGAAN: Object, mischaracterizes the  
11 testimony.

12 A. It not so much worked together, but could agree  
13 on strategies.

14 Q. Okay. Now you understand that the Tobacco  
15 Strategy Review Team was first formed in 1984; right?

16 A. I'm not sure when it was formed, but it must  
17 have been around about that time.

18 Q. Sir, showing you what's previously been marked  
19 as Plaintiffs' Exhibit 495, this document bears the  
20 Bates number 201831134; right?

21 A. Correct.

22 Q. And it talks about the first meeting of the  
23 Tobacco Strategy Review Team; doesn't it?

24 A. It does.

25 Q. And according to the -- this document, the date

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1 of that first meeting was December 14th, 1984.

2 A. That's correct.

3 Q. That was right about the time that this  
4 reorganization of the Group Research & Development  
5 facility at Southampton was being discussed; right?

6 A. That -- that's correct.

7 Q. And as a matter of fact, the Group Research &  
8 Development reorganization at Southampton was  
9 discussed by the Tobacco Strategy Review Team; wasn't  
10 it?

11 A. I'm not aware of that.

12 Q. Turning your attention to Exhibit 495, this  
13 document sets forth the aims of the team; doesn't it?

14 A. Sets forth --

15 Yes.

16 Q. And it says, "The principal aims of the team,"  
17 meaning the Tobacco Strategy Review Team, "will be to  
18 ensure that the Group mounts a coherent strategic  
19 thrust in Tobacco...." That's the first aim; right?

20 A. Correct.

21 Q. It goes on to say that there is an effective  
22 technical and marketing cooperation between the  
23 group's tobacco businesses; right?

24 A. Correct.

25 Q. And another aim of the Tobacco Strategy Review

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1 Team is to provide a uniform approach on smoking  
2 issues; right?

3 A. Correct.

4 MR. McGAAN: Object.

5 Q. That includes --

6 MR. McGAAN: Let -- let me just stop you.

7 I think you misread that, Marti. Take a look. You  
8 read "uniform" where it says "unified." If you want  
9 to correct that.

10 Q. All right.

11 Now the team also reviewed strategies and plans  
12 for the group's tobacco businesses and considered  
13 ways for increasing their effectiveness through  
14 mutual cooperation; right?

15 A. Correct.

16 MR. McGAAN: I'll just -- I'm sorry.

17 Before you answer the question, I'll move to strike  
18 before you answer. All right.

19 MS. WIVELL: Well I wasn't reading,  
20 counsel.

21 Q. Also, Exhibit 495 sets forth that the team will  
22 review the approach being taken on smoking issues and  
23 consider what action needs to be taken to strengthen  
24 this approach or resolve any inconsistencies; right?

25 A. Can you point me to where it says that?

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1 Q. Yes, (c) under number one, sir.

2 A. That's correct.

3 Q. All right. Now after every meeting the Tobacco  
4 Strategy Review Team created minutes; right?

5 A. I believe so.

6 Q. Those minutes were circulated not just to  
7 members of the team, but they were also circulated to  
8 administrators within the tobacco companies; right?

9 A. I believe it was the policy that minutes were  
10 not circulated, but -- but those items in the minutes  
11 which were applicable to a particular company were  
12 communicated.

13 Q. In other words, if, for example, item three --  
14 I'm sorry, strike that.

15 If, for example, item four applied to BATCo out  
16 of these notes which are Exhibit 495, item four would  
17 be circulated to BATCo; right?

18 A. Probably.

19 Q. All right. And, for example, if an item was  
20 applicable to all of the companies, it would be  
21 circulated to all of the tobacco companies; wouldn't  
22 it?

23 A. No. It would be circulated to the principal  
24 companies, the holding companies.

25 Q. For example, if something applied to Brown &

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1 Williamson, it would be circulated to Brown &

2 Williamson; right?

3 A. It would have been circulated, in this instance,  
4 to BATUS.

5 Q. Who would then send it on to Brown & Williamson.

6 A. Would communicate to Brown & Williamson.

7 Q. Now sir, point five of Exhibit 495 says, "Mr.  
8 Ricketts" --

9 And he was one of the people who was present at  
10 the meeting; right?

11 A. Correct.

12 Q. And he was, again, the -- a solicitor who was  
13 also B.A.T Industries P.L.C.'s secretary; right?

14 MR. PULTMAN: Objection, mischaracterizes  
15 the prior testimony.

16 A. I believe he was the secretary, but I'm not  
17 sure.

18 Q. Thank you.

19 It says here, "Mr. Ricketts pointed out that the  
20 B.A.T Industries' legal department also had a role to  
21 play regarding developments in Product Liability  
22 legislation. It was agreed that the Tobacco  
23 Businesses should be required both to keep the  
24 central legal function informed and to consult with  
25 them on developments in this field." Right?

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1 A. That's what it says.

2 Q. All right. Now would that particular note then  
3 have been circulated to B.A.T -- BATUS?

4 A. I -- I wouldn't know.

5 Q. All right. Based on your experience, since it  
6 appears to apply to all of the tobacco businesses,  
7 would it then have been circulated to BATUS?

8 MR. McGAAN: Calls for speculation.

9 A. I wouldn't know whether it went there or not.

10 Q. All right. What role did the B.A.T Industries  
11 legal department have to play regarding developments  
12 in product liability legislation?

13 A. I have no idea.

14 Q. Now sir, when it says it was agreed, as it does  
15 in point five of Exhibit 495, that means that the  
16 people present at the meeting agreed; right?

17 A. That's correct.

18 Q. Now the next point it says, "Mr. Bruell reported  
19 that BATCo. were agreeing with other Tobacco  
20 businesses new structures and proceedings for  
21 co-ordinating R&D." That refers to the  
22 reorganization of Group Research & Development;  
23 doesn't it, sir?

24 A. I --

25 MR. McGAAN: Object, you -- you misread

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1 that. You just got a word wrong, that's all.

2 Q. All right. Well let me try again.

3 Now the next point says, "Mr. Bruell reported  
4 that BATCo. were agreeing with other Tobacco  
5 businesses new structures and procedures for  
6 co-ordinating R&D." Right?

7 A. That's correct.

8 Q. That refers to the proposed reorganization of  
9 the Group Research & Development Center that we  
10 looked at earlier.

11 A. I would think so.

12 Q. Would you turn to the next page. At point seven  
13 it says, "On Smoking Issues, it was agreed that the  
14 paper on cohort analysis which was being prepared by  
15 Dr. Thornton would be discussed by the team before  
16 being presented to the CAC meeting in Phoenix."

17 Right?

18 A. Correct.

19 Q. All right. What is being referred to there,  
20 sir?

21 A. It's the paper on cohort analysis which was  
22 being prepared by Ray Thornton.

23 Q. All right. But what paper is that, sir?

24 A. I don't know what paper it is, but it was a --  
25 it was a cohort analysis.

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1 Q. What is a cohort analysis?

2 A. I'm not sure.

3 Q. Okay. Now sir, would you turn your attention to  
4 page -- or to point eleven. It says there, "It was  
5 agreed that the strategies to be employed worldwide  
6 against Marlboro should be reviewed by the team."  
7 Right?

8 A. That's what it says.

9 Q. All right. That means it was agreed that they  
10 would look at what strategies Marlboro used for its  
11 marketing worldwide; right?

12 MR. McGAAN: Object.

13 A. No, that's not what it's saying. It says it was  
14 agreed that the strategies be employed worldwide  
15 against Marlboro.

16 Q. Ah.

17 MS. WIVELL: I would like to take a brief  
18 break.

19 THE REPORTER: Off the record, please.

20 (Recess taken.)

21 BY MS. WIVELL:

22 Q. Sir, on the second page of Exhibit 495, under  
23 point eight, there is reference to the Barclay issue;  
24 right?

25 A. To the problems encountered by Barclay, yes.

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- 1 Q. All right. Now Barclay was a particular kind of  
2 cigarette; right?
- 3 A. Barclay had a particular type of filter.
- 4 Q. It had an Actron filter; hadn't it?
- 5 A. What was called the Actron filter.
- 6 Q. All right. And according to this document,  
7 Brown & Williamson was going to be asked to provide a  
8 position paper summarizing the current status of  
9 their filter developments aimed at reducing the need  
10 for any qualification of the rating. That's what it  
11 says here; right?
- 12 A. That's correct.
- 13 Q. All right. And when it says "Brown & Williamson  
14 was asked to provide a position paper summarizing the  
15 current status of their filter development," they're  
16 talking about -- that talks about their Actron filter  
17 work; doesn't it?
- 18 A. It doesn't say, but I presume it is.
- 19 Q. All right. You presume it is because Actron was  
20 a filter that was developed by Brown & Williamson;  
21 right?
- 22 A. That is correct.
- 23 Q. All right. The work was also funded by BATCo;  
24 wasn't it, sir?
- 25 A. Not that I'm aware of.

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1 Q. All right. It may have been, but you might just  
2 not be aware of it; right?

3 A. I don't understand why it might be funded by  
4 BATCo, it was a Brown & Williamson development.

5 Q. Are you aware of Lance Reynolds' testimony on  
6 the subject of the Actron filter --

7 A. No, I'm not.

8 Q. -- in this case?

9 A. I'm not.

10 Q. Now sir, are you aware that Actron research was  
11 done at the University of Minnesota?

12 A. No, I'm not.

13 (Plaintiffs' Exhibit 1466 was marked  
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as  
17 Plaintiffs' Exhibit 1466, this is a document that  
18 bears the Bates number 521011586; right?

19 A. That's correct.

20 Q. And this is another set of minutes from the  
21 Tobacco Strategy Review Team; right?

22 A. That's what the heading says.

23 Q. It's of a meeting that was held on January 23rd,  
24 1985.

25 A. That's correct.

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1 Q. The purpose of the meeting, according to the  
2 minutes, was to agree strategies which could be  
3 followed with regard to the rating of Barclay.

4 A. That's what it says.

5 Q. By the way, when they're talking about "rating,"  
6 they're talking about tar/nicotine ratings; right?

7 A. I would think so.

8 Q. All right.

9 A. It doesn't clarify it here.

10 Q. All right. But that's what you understand the  
11 Barclay controversy was about; don't you?

12 A. That's correct.

13 Q. In other words, Brown & Williamson had made  
14 certain claims for Barclay cigarettes for delivery of  
15 tar and nicotine that were contested by Philip  
16 Morris.

17 MR. McGAAN: Object, mischaracterizes the  
18 dispute.

19 A. Brown & Williamson made no claims. All products  
20 are required to be tested by the FTC method, and the  
21 FTC method gave certain deliveries for Barclay. It  
22 was those deliveries and the design of the filter  
23 that was contested by Philip Morris.

24 Q. But that's what's being referred to when they're  
25 talking about the rating of Barclay; right?

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1 A. I am assuming that.

2 Q. You assume that based on your experience on the  
3 BATCo board and your experience at Brown &  
4 Williamson; right?

5 A. That's correct.

6 Q. Now if we turn to the second-to-the-last page of  
7 the document, point eleven says, "It was agreed that  
8 a meeting should be arranged in London as soon as  
9 possible in order that the Chairman could establish  
10 with Mr. Sandefur (deputising for Dr. Hughes who is  
11 ill):-

12 "The timetable and probability of success for  
13 the project to develop a filter that would give a  
14 guaranteed Ultra rating." Right?

15 A. That's correct.

16 Q. That --

17 That's talk about Barclay again; isn't it?

18 A. It doesn't say so.

19 Q. Well in the next paragraph that I didn't read  
20 yet it says, "The best approach to obtaining an  
21 agreement in the USA and Switzerland, similar to that  
22 agreed with Philip Morris and the rest of the  
23 industry in Germany, whereby a dual rating could be  
24 applied to Barclay which could -- would keep it  
25 within the Ultra classification;" right?

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1 A. That is what is written, yeah.

2 Q. All right. In other words, what's being talked  
3 about here at point eleven, again, is that the  
4 Tobacco Strategy Review Team wanted to meet in London  
5 with representatives from Brown & Williamson about  
6 Barclay; right?

7 MR. McGAAN: Object, mischaracterizes the  
8 document.

9 A. It says meeting with the chairman and Mr.  
10 Sandefur.

11 Q. All right. In London; right?

12 A. In London, that's correct.

13 Q. And it says, "For the meeting, Mr. Sandefur will  
14 be accompanied by his filter expert and Mr. Pepples;"  
15 right?

16 A. That's correct.

17 Q. Mr. Pepples was the in-house legal director for  
18 Brown & Williamson.

19 A. He was vice-president law, yes.

20 Q. And he was in charge of the legal department;  
21 wasn't he?

22 A. That is correct.

23 Q. Fine.

24 (Plaintiffs' Exhibit 1467 was marked  
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as  
3 Plaintiffs' Exhibit 1467, this is another set of  
4 minutes from the Tobacco Strategy Review Team; right?

5 A. That's what it says.

6 Q. And they are minutes of a meeting held on  
7 January 29th, 1985; right?

8 A. That is correct.

9 Q. For the record, Exhibit 1467 bears the Bates  
10 number 521011579; right?

11 A. That's correct.

12 Q. Now just so we're clear, at the --

13 From the time the Tobacco Strategy Review Team  
14 was constituted in 1984 until 1988 when you became a  
15 member, there was no representative from Brown &  
16 Williamson; was there, sir?

17 A. There was a representative from BATUS.

18 Q. Who was that?

19 A. Mr. --

20 Well Mr. McCarty and also Mr. Frigon.

21 Q. All right. Who was Mr. McCarty?

22 A. Mr. McCarty was the chairman of BATUS until the  
23 end of 1985 I think.

24 Q. And Mr. Frigon?

25 A. Mr. Frigon at this time, in February of '85, was

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1 the chief financial officer and chairman designate.  
2 Q. Of what?  
3 A. Of BATUS.  
4 Q. All right. And those two individuals, when  
5 they -- when their names appear as being present at  
6 the Tobacco Strategy Review Team, were  
7 representatives of B&W?  
8 A. They would speak on behalf of Brown &  
9 Williamson, yes.  
10 Q. All right. Now sir, they were actually not  
11 members of the Tobacco Strategy Review Team, though;  
12 were they?  
13 A. They were at --  
14 Well I'm not sure whether they were both  
15 together; that is, members at the same time. But  
16 certainly Mr. Frigon was a member, and I'm sure Mr.  
17 McCarty was.  
18 Q. All right. Well their names do not appear on  
19 Exhibits 495 or four --  
20 A. No.  
21 Q. -- 1466; do they?  
22 A. That's correct.  
23 Q. All right.  
24 A. But there was a subsequent change.  
25 Q. And did it occur at or around the time of this

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1 meeting in January of 1985?

2 A. I am not sure when it took place.

3 Q. But we do see their names on the list of  
4 attendees at the January 29th, 1985 TSRT meeting;  
5 right?

6 A. That is correct.

7 Q. TSRT stands for Tobacco Strategy Review Team.

8 A. Tobacco Strategy Review Team, correct.

9 Q. Okay. At this meeting that occurred on January  
10 29th, 1985, Mr. Reynolds talked about Brown &  
11 Williamson's filter research; didn't he?

12 A. May I read it?

13 Q. Certainly.

14 Let me rephrase the question. At the January  
15 29th, 1985 TSRT meeting, Mr. Reynolds presented  
16 information to the team members about the B&W Actron  
17 filter research that had been done; right?

18 A. That's correct.

19 Q. And the committee agreed at that meeting that  
20 Mr. Bruell would arrange for all European countries  
21 to be made aware of the product and testing program  
22 that had been described; right?

23 MR. PULTMAN: Object to the form of the  
24 question, no foundation, mischaracterizes prior  
25 testimony.

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1 A. You read what was written here correctly.

2 Q. It's written there at point five; isn't it?

3 A. That's correct.

4 Q. All right. And in fact, the research that Mr.

5 Reynolds had presented to the TSRT on the Actron

6 filter was going to be made available for other

7 companies within the BAT Group; wasn't it?

8 A. It would appear so.

9 Q. And that was a decision that was made at the

10 TSRT; wasn't it?

11 MR. PULTMAN: Object to the form of the

12 question.

13 A. What was agreed was that Mr. Bruell should

14 arrange for all European companies being aware of the

15 product and testing program.

16 Q. And could make arrangements to have it tested

17 and set up programs to install the necessary

18 technology capability for its production; right?

19 A. The necessary technical capability for its

20 production.

21 Q. That's correct; isn't it?

22 A. That's correct.

23 Q. And that was something that the TSRT agreed to

24 at this meeting on January 29th, 1985; right?

25 A. That's what it would appear to be.

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1                   (Plaintiffs' Exhibit 1468 was marked  
2                   for identification.)

3 BY MS. WIVELL:

4 Q.    Sir, showing you what's been marked as  
5 Plaintiffs' Exhibit 1468, this is a set of Tobacco  
6 Strategy Review Team minutes for July 17th, 1985;  
7 right?

8 A.    That's what it says.

9 Q.    All right. Why don't you take a moment to  
10 review it.

11 A.    May I correct something I said earlier about the  
12 TSRT team? I know for a fact Mr. Frigon was --  
13 became a member before I did of the TSRT. He  
14 obviously was -- and Mr. McCarty were present at this  
15 meeting in -- together with the Brown & Williamson  
16 people because he is not yet a member of the team in  
17 July '85.

18 Q.    And by "this meeting" in your last answer, you  
19 were referring to the minutes of the January 29th,  
20 1985 meeting, Exhibit 1467; right?

21 A.    That is correct.

22 Q.    All right.

23        You've had the opportunity, sir, to read Exhibit  
24 1468?

25 A.    I have.

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1 Q. All right. At this meeting of the Tobacco  
2 Strategy Review Team that occurred on July 17th,  
3 1985, the team agreed that the first priority should  
4 be to re-establish Barclay as a significant and  
5 individual brand; right?

6 A. Correct.

7 Q. And it was believed that it was important to  
8 incorporate Actron technology and relaunch the  
9 product; right?

10 A. That's correct.

11 Q. All right. And the team established the aim for  
12 Brown & Williamson to be the first company to launch  
13 the product based on Actron-plus technology; right?

14 MR. PULTMAN: Object to the form of the  
15 question.

16 A. Can you point that out to me?

17 Q. Number five, sir.

18 A. That's correct.

19 Q. The Tobacco Strategy Review Team also at this  
20 meeting discussed the compendium of epidemiological  
21 studies; right?

22 A. That's correct.

23 Q. You're familiar with that document; aren't you,  
24 sir?

25 A. I'm not that familiar with it, no.

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1 Q. Well you are familiar with it generally; aren't  
2 you?

3 A. I know of its -- of its existence.

4 Q. All right. And it was a document that was put  
5 together in order to -- strike that.

6 At this particular meeting of the Tobacco  
7 Strategy Review Team, a proposal was accepted to set  
8 up a conference on limitations of epidemiology;  
9 right?

10 A. That's correct.

11 Q. And it was agreed that Dr. Thornton would  
12 produce a paper that outlined the conference; right?

13 MR. McGAAN: Object, mis --

14 You misread the document.

15 Q. Let me rephrase the question.

16 It was agreed at this meeting that Dr. Thornton  
17 would put the conference together; right?

18 A. Should produce a paper outlining the proposed  
19 arrangements of the conference.

20 Q. Including the subjects to be covered, the list  
21 of people who would be invited to attend, and  
22 proposed sponsors of the conference; right?

23 MR. McGAAN: Let me just interpose an  
24 objection before you answer, Mr. Pritchard. I'm  
25 concerned that the record is not reflecting whether

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1 you remember this meeting and what happened at it, or  
2 whether you're just reading from this document  
3 sitting here today. So if you would make it clear in  
4 your answer which it is, it would be helpful for the  
5 record.

6 THE WITNESS: I'm reading from this  
7 document. I was not present at the meeting.

8 Q. According to the document, Dr. Thornton was to  
9 outline the subjects to be covered, the people who  
10 attend, and proposed sponsors.

11 A. For the conference, yes.

12 Q. Now sir, this conference took place; didn't it?

13 A. I don't know.

14 Q. You just don't know one way or the other.

15 Now the next --

16 If you'd turn to the next page, please, there's  
17 a heading "R&D;" right?

18 A. That's correct.

19 Q. And it says, "Progress in formulating a Group  
20 R&D programme for Tobacco were noted;" right?

21 A. "Was noted," yes.

22 Q. And it says, "A fuller report will be presented  
23 after the Group R&D conference in November;" right?

24 A. That's what it says.

25 Q. And that would be consistent with the statement

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1 in Exhibit 701 that we saw earlier, that by the end  
2 of 1985 there would be a coordinated B.A.T  
3 Industries/BATCo research and development program;  
4 right?

5 MR. McGAAN: Object to the form of the  
6 question, calls for speculation.

7 Here's 701.

8 (Exhibit 701 handed to the witness.)

9 Q. Do you have the question in mind, sir?

10 A. No. Could you repeat it?

11 Q. Yes, sir.

12 The statement in Exhibit 1468 about progress in  
13 formulating a group R&D program for tobacco, that's  
14 consistent with the timetable that's mentioned in  
15 Exhibit 701 where it says, "A comprehensive  
16 co-ordinated BAT Industries/BATCo R&D program will be  
17 agreed with the CAC companies by the end of 1985 and  
18 made available to the Tobacco Strategy Review Team;"  
19 right?

20 MR. McGAAN: Object, it calls for  
21 speculation.

22 A. That is what it says.

23 Q. And that's consistent with the statement in  
24 Exhibit 701; isn't it, sir?

25 MR. McGAAN: Object, it calls for

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1 speculation, lacks foundation.

2 A. That would appear to be what it says.

3 Q. And the Tobacco Strategy Review Team that's

4 referred to in that statement in Exhibit 701, that's

5 the same team whose minutes we have before us in

6 Exhibit 1468; right?

7 A. I'm assuming it would be the same team.

8 Q. You're assuming that because there was only one

9 Tobacco Strategy Review Team; right?

10 A. That's correct. But then I don't know whether

11 the membership changed.

12 Q. Now sir, in addition at the meeting on July

13 17th, 1985, the Tobacco Strategy Review Team reviewed

14 competition with Marlboro and brand strategies;

15 right?

16 A. That's correct.

17 Q. And it refers to a paper on strategies to

18 compete with Marlboro which was accepted; right?

19 A. What it says was "The paper on strategies to

20 compete with Marlboro was accepted as a good

21 assessment of the situation...."

22 Q. And it goes on and says "and it was agreed that

23 competitive strategies should be based on a range of

24 brands rather than on an attempt to develop a single

25 brand as a direct competitor;" right?

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1 A. That's what it says, yes.

2 Q. Now the paper that's referred to here, it was  
3 common for TSRT members before meetings to get  
4 briefing materials on various subjects that were  
5 going to be addressed at the meetings; right?

6 MR. PULTMAN: Object to the question, no  
7 foundation.

8 A. I don't know at this time. Subsequently, when I  
9 became a member, I would receive papers, yes.

10 Q. And you received them in advance of the meetings  
11 so that you could be up to speed on the issues that  
12 were going to be discussed; right?

13 A. Occasionally, yes.

14 Q. And there were booklets actually that were put  
15 together of briefing papers on various subjects that  
16 you received before TSRT meetings; right?

17 A. Sometimes.

18 Q. And so the reference to the paper, based on your  
19 experience, would you expect it to refer to a paper  
20 that had been either presented to the team members  
21 before the meeting or at the meeting?

22 MR. McGAAN: Calls for speculation.

23 A. I wouldn't know whether it was before or at the  
24 meeting, but a paper was obviously produced.

25 Q. All right. And -- and that's typically what

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1 happened, based on your experience as a TSRT member;  
2 right?

3 MR. McGAAN: Object, mischaracterizes what  
4 he said about the frequency.

5 A. That -- that is what usually happened, yes.

6 Q. All right. Now in the minutes it goes on to  
7 say, "Marlboro is particularly strong in attracting  
8 young smokers and it was important to have brands  
9 which appealed to this customer group." Right?

10 A. That's what it says.

11 Q. All right. In other words, it was determined by  
12 the team that Marlboro was strong in attracting young  
13 smokers, and the team thought it was important for  
14 the BAT Group to have brands which appealed to that  
15 customer group; right?

16 A. The team didn't decide that. Clearly, the paper  
17 indicated that Marlboro -- where Marlboro's strength  
18 was.

19 Q. All right. But it goes on to say after that,  
20 "It was agreed that, in competing against Marlboro,  
21 the market segment at which a particular Group brand  
22 was being directed should be carefully defined and  
23 all aspects of the promotion and marketing should be  
24 clearly targeted on the chosen customer group."  
25 Right?

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1 A. That's what is written here.

2 Q. And sir, you are aware, aren't you, that it was  
3 determined that BAT Group cigarettes would be  
4 marketed at the same groups that Marlboro was  
5 marketing to; right?

6 MR. McGAAN: Object, vague.

7 MR. PULTMAN: Object to the question, no  
8 foundation.

9 A. I don't know what decision was made.

10 Q. Well when it says it was important to have  
11 brands that appealed to this customer group -- I'm  
12 sorry, strike that.

13 It says in point 13, "Marlboro is particularly  
14 strong in attracting young smokers and it was  
15 important to have brands which appealed to this  
16 customer group." That reflects that the TSRT thought  
17 it was important to have brands which appealed to  
18 that particular customer group; right?

19 MR. McGAAN: Object, mischaracterizes what  
20 he just said.

21 A. I think the TSRT were accepting the statements  
22 that were made in the paper.

23 (Plaintiffs' Exhibit 1469 was marked  
24 for identification.)

25 BY MS. WIVELL:

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- 1 Q. Sir, showing you what's been marked as  
2 Plaintiffs' Exhibit 1469, this is a document which  
3 bears the Bates number 522000971; right?
- 4 A. That is correct.
- 5 Q. And it's headed "TOBACCO STRATEGY REVIEW TEAM;"  
6 right?
- 7 A. That's correct.
- 8 Q. And the subject is "PHILIP MORRIS INC.;" right?
- 9 A. That's what it says.
- 10 Q. Begins with the "CORPORATE OVERVIEW;" doesn't  
11 it?
- 12 A. That's what it says.
- 13 Q. This is the kind of paper that would have been  
14 presented as part of the briefing materials to the  
15 Tobacco Strategy Review Team; right?
- 16 A. It may have been.
- 17 Q. All right. Would you turn to the page that ends  
18 with Bates number 974. There at the top of the page  
19 it says, "The young, urban, trend setting smoker will  
20 remain the focus and prime target for Philip Morris  
21 brands;" doesn't it, sir?
- 22 A. That's what it says.
- 23 Q. And it goes on to say "That this segment  
24 constitutes only a small percentage of the total  
25 market is less important than the fact that they

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1 represent the future and reflect the aspirations of  
2 other smokers;" right?

3 A. That's what it says.

4 Q. And sir, isn't it true that the BAT Group  
5 recognized that young smokers were important because  
6 they represented the future of the cigarette market?

7 A. I don't --

8 MR. McGAAN: Object, it lacks foundation.

9 A. I don't know what --

10 This was referring -- reflecting to the Philip  
11 Morris view.

12 Q. All right. Well let me ask you this, sir:  
13 Isn't it true that Brown & Williamson recognized that  
14 young smokers represented the future of the smoking  
15 industry?

16 MR. McGAAN: Object, vague, lacks  
17 foundation.

18 A. It had -- it had to represent the future.

19 Q. Now this document goes on to talk about the  
20 implications for B.A.T; doesn't it?

21 A. That's what it says next.

22 Q. And it says, "Philip Morris will continue to  
23 grow, increasing its Free World share in the  
24 foreseeable future mainly on the back of Marlboro.  
25 B.A.T is well positioned to contain the Philip Morris

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1 strategy of establishing secondary brands. Our  
2 ability to contain the further growth of Marlboro and  
3 to contribute to its eventual decline, will depend on  
4 our brands increasingly taking over the ground  
5 occupied by Marlboro through product innovation,  
6 better value for money and the optimum development of  
7 our key trademarks;" right?

8 A. That's what it says.

9 Q. And sir, you understand, based on your years of  
10 experience on the BATCo board and as CEO of Brown &  
11 Williamson, that one of the major strategies of the  
12 BAT Group tobacco companies was to try and replace  
13 Marlboro as the number one cigarette manufacturer in  
14 the world.

15 MR. McGAAN: You mean Philip Morris.

16 A. Could you repeat that question?

17 Q. All right.

18 A. I think you misstated yourself.

19 Q. Yes, I did.

20 Now sir, you understand, based on your years of  
21 experience on the BATCo board and as CEO of Brown &  
22 Williamson, that one of the major strategies of the  
23 BAT Group companies was to try and replace Philip  
24 Morris as the number one cigarette manufacturer in  
25 the world.

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1 A. It was always our strategy to succeed.

2 Q. And that was that you wanted to replace Philip  
3 Morris cigarettes in markets with B.A.T cigarettes;  
4 right?

5 MR. PULTMAN: Object to the form of the  
6 question as vague.

7 A. We already had outmarketed Philip Morris in a  
8 number of markets.

9 Q. But where you didn't outmarket Philip Morris,  
10 you would agree that the BAT Group targeted those  
11 markets where Philip Morris brands were successful to  
12 try and replace Philip Morris cigarettes with BAT  
13 Group cigarettes; right?

14 A. Or whoever was the -- the lead company.

15 Q. So if Philip Morris was targeting young smokers,  
16 that's a group that the BAT Group wanted to  
17 replace --

18 MR. McGAAN: Object.

19 MR. FRYKBERG: Object to form.

20 Q. -- Philip Morris cigarettes with BAT Group  
21 cigarettes; right?

22 MR. FRYKBERG: Object to form.

23 A. Not necessarily. It's just one -- one segment  
24 of the market.

25 Q. But it was an important segment of -- of the

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1 market, according to this paper; right?

2 A. All segments are important.

3 Q. Well sir, the Tobacco Strategy Review Team  
4 specifically focussed in their minutes, Exhibit 1468,  
5 on Marlboro's strength in attracting young smokers;  
6 right?

7 MR. McGAAN: Object.

8 MR. FRYKBERG: Object to form.

9 MR. McGAAN: Mischaracterizes.

10 A. I'm trying to find it.

11 MR. McGAAN: Oh, she's back --

12 THE WITNESS: Back on --

13 Q. Point 13 -- or I'm sorry, point fifteen. Let me  
14 rephrase the question.

15 The Tobacco Strategy Review Team specifically  
16 focussed in their minutes, Exhibit 1468, on  
17 Marlboro's strength in -- in attracting young  
18 smokers; right?

19 A. That's the extract from the paper that was  
20 presented, yes.

21 Q. And it was thought by the TSRT important to have  
22 brands that appealed to that particular customer  
23 group; right?

24 A. That is correct.

25 (Plaintiffs' Exhibit 1470 was marked

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1 for identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as  
4 Plaintiffs' Exhibit 1470, this is a document that  
5 bears the Bates number 401097954 on its first page;  
6 right?

7 A. Correct.

8 Q. And these are the Tobacco Strategy Review Team  
9 minutes for a meeting held November 5th, 1987; right?

10 A. That's what it says.

11 Q. All right. Would you please take a moment and  
12 review what it says under point three, or under the  
13 heading "R&D/RJR Smokeless Cigarette."

14 You've read that portion of Exhibit 1470?

15 A. I -- I've read three, yes.

16 Q. All right. Now the Tobacco Strategy Review Team  
17 at its meeting November 5th, 1987, discussed the  
18 product Premier that was being developed by R. J.  
19 Reynolds; right?

20 A. I -- I believe it had already been marketed.

21 Q. All right. Now it says here, "It was noted this  
22 is being -- was being taken extremely seriously by  
23 RJR...;" right?

24 A. That's correct.

25 Q. And in fact, the Premier product was a, quote,

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1 unquote, smokeless cigarette; right?

2 A. I believe it was. But whether it was totally  
3 smokeless, I can't remember.

4 Q. All right. Now you would agree that the BAT  
5 Group companies believed that the Premier product  
6 could have a major impact on the cigarette market.

7 A. It was an innovation, and I think it was  
8 generally felt that might be so.

9 Q. Now sir, based on your experience and your  
10 knowledge of Premier, you understand that the company  
11 that first gets a smokeless cigarette to the market  
12 would have a significant economic advantage; wouldn't  
13 it?

14 MR. McGAAN: Object, assumes facts not in  
15 evidence.

16 A. I don't think it naturally follows. Product has  
17 to be a success.

18 Q. Actually, when I asked that question I thought I  
19 should have added the word "successful." Let me  
20 rephrase the question.

21 You would agree that it's been long known within  
22 the cigarette manufacturing industry that the company  
23 that first gets a successful smokeless cigarette to  
24 the market would have a large potential economic  
25 advantage.

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1           MR. McGAAN: Object to the extent it calls  
2 for him to speak for the industry.

3           You can answer.

4 A.    It doesn't necessarily follow because no one was  
5 in a position to know what -- what demand, if any,  
6 there was for a smokeless cigarette.

7 Q.    Well at the top of page two of Exhibit 1470 it  
8 refers to a report on the Premier product that Mr.  
9 Heard gave to the TSRT; right?

10 A.    It would appear to be a statement made by Mr.  
11 Heard.

12 Q.    And it is reported here that he said that this  
13 product could have a major impact on the market.

14 A.    That is what is written here.

15 Q.    And he recommended that B.A.T build up its  
16 research efforts specifically at designing a product  
17 that would compete with the Premier initiative;  
18 right?

19 A.    That's -- that's what is written here.

20 Q.    And as a matter of fact, you know that that  
21 happened; didn't it?

22 A.    The effort was initiated.

23 Q.    And Mr. Heard presented at this meeting a paper  
24 proposing a program of basic research for the BAT  
25 Group; right?

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1 A. That's what it says.

2 Q. And that research project contained not only  
3 regular research and development costs, but also  
4 additional research expenditures to try and develop a  
5 product like the RJR smokeless cigarette.

6 A. That's what it says here.

7 Q. You understand that that actually happened;  
8 didn't it?

9 A. The effort --

10 MR. McGAAN: Object, vague as to what  
11 "that" is.

12 Go ahead.

13 A. Program was initiated and subsequently  
14 terminated.

15 Q. Now at this meeting, the chairman informed the  
16 meeting that he was considering changes to the  
17 composition of the TSRT; right?

18 A. I'm sorry, which -- which meeting are we talking  
19 about?

20 Q. I'm sorry. The meeting that's reflected in  
21 Exhibit 1470. Let's me rephrase the question.

22 At the November 5th, 1987 meeting, the group --  
23 the TSRT chairman informed the group that he was  
24 considering changes to the composition of the team;  
25 right?

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1           MR. McGAAN: Object, it calls for  
2 speculation. Unfortunately, the record's not  
3 reflecting the witness wasn't at the meeting, so if  
4 your question is does the statement say that, it's a  
5 different question.

6 A. Can you point out to me where --

7 Q. Could you direct your attention to point 22,  
8 sir.

9 A. Twenty-two.

10 Q. And there it reflects that the chairman informed  
11 the meeting he was considering changes to the  
12 composition of the team; right?

13 A. That was --

14 That's what it says.

15 Q. Now the chairman that's referred to here is the  
16 chairman of the TSRT; right?

17 A. That's correct.

18 Q. And the chairman of the TSRT was the B.A.T  
19 Industries chairman, Patrick Sheehy; right?

20 A. That's correct.

21 Q. And in fact, Mr. Sheehy did increase the  
22 membership on the TSRT; didn't he?

23 A. I believe so.

24           MR. PULTMAN: Object to the form of the  
25 question.

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1 Q. And you became a member as a result of that  
2 increase; right?

3 A. I'm not sure that that was at this increase. I  
4 told you earlier that there was a -- a --

5 Subsequent to the original group, there were --  
6 there were added additional members before I joined  
7 as a member.

8 Q. All right. Well the Exhibit 1470 is dated  
9 November 5th, 1987; right?

10 A. That's correct.

11 Q. And in 1988 there was a -- an increase in  
12 membership of the TSRT; right?

13 Why don't you turn back to Exhibit 1464.

14 (Exhibit 1464 handed to the witness.)

15 THE WITNESS: Thank you.

16 MR. McGAAN: Take your time.

17 Do you have the question in mind?

18 THE WITNESS: No. Could -- could you give  
19 me the question again, please?

20 MS. WIVELL: Certainly.

21 Q. In 1988 there was an increase in membership of  
22 the TSRT; --

23 A. There was indeed.

24 Q. -- right?

25 Before we talk about that, I want to go back to

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1 Exhibit 1470, the November 5th, 1987 notes. Would  
2 you turn to the second page.

3 At that meeting the TSRT accepted the research  
4 program and proposals for funding for the upcoming  
5 year; didn't it?

6 A. It refers to a basic program, but it's not clear  
7 what that covers.

8 Q. Well it says at point seven, "Both the research  
9 programme and the proposals for its funding were  
10 accepted as a reasonable basis on which to proceed;"  
11 right?

12 A. That is what it says here.

13 Q. And that means that the TSRT accepted the  
14 proposals that Mr. Heard had set before them; right?

15 A. That's what it would say.

16 Q. Now getting back to Exhibit 1464, we were  
17 talking about the increase in membership on the TSRT.  
18 This document talks about that increase in  
19 membership; doesn't it?

20 A. It does.

21 Q. And it also talks about the membership of the  
22 TSRT before the increase in membership; doesn't it?

23 A. Where does it say that?

24 Q. In the third paragraph, sir.

25 A. Yes.

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1 Q. And before the increase that's referred to in  
2 this document, the membership of the various tobacco  
3 strategy review teams which the B.A.T Industries  
4 board had set up had been limited to the CPC and main  
5 board members responsible for liaison with each of  
6 the operating groups.

7 A. And that's where my memory diverges from this  
8 note, because I'm absolutely positive that Mr. Frigon  
9 was a member of the team before I actually joined.  
10 And you will note that it says the other addressees  
11 of this note will also be free to attend the  
12 meetings. The other addressees were Mr. Rombaut, Dr.  
13 Erichsen and Mr. Frigon.

14 Q. All right.

15 A. And they were -- to my recollection, they were  
16 members of the Tobacco Strategy Team prior to Mr.  
17 Bramley, myself and Mr. Herter and Mr. Saboia joined  
18 in.

19 Q. And from Frigon represented Brown & Williamson  
20 on the TSRT?

21 A. Mr. -- Mr. Frigon represented BATUS.

22 Q. All right. And which spoke --

23 A. And thus, indirectly, Brown & Williamson.

24 Q. Thank you.

25 MS. WIVELL: Would you mark the highlighted

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1 one, please.

2 (Plaintiffs' Exhibit 1471 was marked  
3 for identification.)

4 MS. WIVELL: All right. I would like the  
5 record to reflect that Exhibit 1471, which bears the  
6 Bates number 201827781, actually is a highlighted  
7 copy. I apparently last night got a little carried  
8 away and highlighted two. And I've only one  
9 unhighlighted one, which I have provided to defense  
10 counsel.

11 That's all right, it --

12 MR. McGAAN: Let me make a suggestion.

13 MS. WIVELL: I just want the record to  
14 reflect that the highlighting is mine and not the --  
15 on the original document.

16 MR. McGAAN: No, and I appreciate that.  
17 Why don't -- why don't I suggest this though: Go  
18 ahead and examine, and then for the reporter's  
19 transcript we substitute the clean one.

20 MS. WIVELL: All right.

21 MR. McGAAN: Because I would object for  
22 trial purposes to having attached to the  
23 deposition --

24 MS. WIVELL: Oh, absolutely.

25 MR. McGAAN: -- a highlighted exhibit. So

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1 if you don't mind, we'll just substitute --

2 MS. WIVELL: The highlighting won't copy.

3 MR. McGAAN: -- the clean one. But --

4 Yeah, that's the original.

5 MS. WIVELL: Why don't we do that.

6 MR. McGAAN: Let's deal with it at the  
7 break.

8 MS. WIVELL: Yeah.

9 MR. McGAAN: Let's deal with it at the  
10 break.

11 MS. WIVELL: But I just want the record to  
12 be clear.

13 MR. McGAAN: Okay.

14 BY MS. WIVELL:

15 Q. Sir, Exhibit 1471 is the Tobacco Strategy Review  
16 Team minutes of the first meeting you attended;  
17 right?

18 A. Well I was at the meeting, but I don't know  
19 whether that was the first one I attended or not.

20 Q. Do you remember attending meetings before this  
21 one?

22 A. I don't, but I --

23 I'm not certain of the date that I attended the  
24 first meeting.

25 Q. All right. This particular document is dated

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1 the 31st of October of 1988; right?

2 A. That's correct.

3 Q. Does that comport with your memory of  
4 approximately the time when you first began  
5 attending?

6 A. I don't remember when I started attending,  
7 but --

8 It would appear to be.

9 Q. Did Patrick Sheehy invite you to attend, to  
10 become a member?

11 A. I imagine he must have, yeah.

12 Q. You just don't remember as you sit here.

13 A. I just don't remember.

14 Q. But you would have expected that he would have  
15 issued the invitation as chair of B.A.T Industries  
16 P.L.C.; right?

17 MR. PULTMAN: Object to the question, no  
18 foundation.

19 A. As the -- the chairman of the team, yes.

20 Q. Now in the first paragraph it refers to  
21 "Introducing the meeting, the Chairman said that the  
22 membership of the team had been extended...." That  
23 chairman, that -- that reference is to Pat Sheehy;  
24 right?

25 A. That's correct.

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1 Q. And at this meeting, the terms of reference for  
2 the team were reviewed; right?

3 A. That's what it says.

4 Q. Now "terms of reference," that's not something  
5 that we use here very often in the United States.

6 What do you understand the phrase "terms of  
7 reference" to mean?

8 A. Basically those areas that the team would take  
9 into consideration.

10 Q. Things that they were responsible for?

11 A. Not necessarily --

12 MR. McGAAN: Objection.

13 A. -- responsible for, but that fell within the  
14 purview of the operations of their companies.

15 Q. All right. So when it's referring to the terms  
16 of reference, those are the terms of reference for  
17 the TSRT; right?

18 A. That's correct.

19 Q. And in fact those terms of reference that are  
20 listed under paragraph two, the first paragraph under  
21 number two, are essentially the same as those that we  
22 saw in the first minutes of the first Tobacco  
23 Strategy Review Team meeting; right?

24 MR. McGAAN: Let me object unless we can  
25 take a moment to get them out.

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1 MS. WIVELL: We can take a moment and get  
2 it out.

3 MR. McGAAN: Do you remember the exhibit  
4 number?

5 MS. WIVELL: I believe it's 495.

6 Q. You have my question in mind, sir?

7 A. I do.

8 Q. All right. Let me rephrase it.

9 The terms of reference for the Tobacco Strategy  
10 Review Team as recorded in the minutes of the first  
11 meeting you -- or the meeting you attended on October  
12 31st, are essentially the same as those that were set  
13 forth for the team at its first meeting; right?

14 A. The first -- opening paragraph is, and then  
15 there are additional references which are somewhat  
16 different to what was stated on the 14th of December  
17 one.

18 Q. All right. So it would be fair to say that the  
19 basic aims were the same, but then there were some  
20 added responsibilities; right?

21 A. That's correct, which were different from what  
22 was stated in the previous one.

23 Q. All right. So in addition to what the team had  
24 been responsible for in the past, it would also be  
25 concerned with major new initiatives; right?

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1 A. That's correct.

2 Q. And it would also be concerned with removing  
3 structural and other obstacles to effective marketing  
4 or technical cooperation between the group companies;  
5 right?

6 A. That's what it says.

7 Q. All right. And there's reference here to the  
8 fact that it was intended to be a means of sharing  
9 information in cases where that was appropriate;  
10 right?

11 A. It says that.

12 Q. All right. Now among the issues that were  
13 discussed at this meeting that you attended on the  
14 31st of October of 1988 was the compendium on smoking  
15 issues; right?

16 A. It makes reference to a summary compendium under  
17 the heading "Smoking Issues." Whether that was what  
18 the compendium was about, I don't know.

19 Q. Well sir, was there more than one compendium on  
20 smoking issues that was developed?

21 A. I don't know.

22 Q. All right. But you knew --

23 You do know that there was a compendium of  
24 epidemiological studies that was prepared by Ray  
25 Thornton.

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- 1 A. I do.
- 2 Q. All right. And the purpose of that compendium
- 3 was to collect materials that supported the
- 4 controversy on smoking issues; right?
- 5 A. I'm not sure what the content was.
- 6 Q. Showing you what's been marked as Plaintiffs'
- 7 Exhibit 629, this is a document that bears the Bates
- 8 number 107319251; right?
- 9 A. That is correct.
- 10 Q. And it is entitled "COMPENDIUM OF
- 11 EPIDEMIOLOGICAL STUDIES, Meeting held at BAT
- 12 Industries, Windsor House, on 27 December, 1984;"
- 13 right?
- 14 A. That's what it says.
- 15 Q. And those present at the meeting were Patrick
- 16 Sheehy, E. A. Bruell and Ray Thornton; right?
- 17 A. That's what it says.
- 18 Q. And it's concerning the compendium of
- 19 epidemiology. It reaffirmed that the aim of the
- 20 compendium was to illustrate the range of materials
- 21 which supported the controversy on smoking issues;
- 22 right?
- 23 A. That's what it says.
- 24 Q. Goes on to say, "Anomalies," in quotes, "would
- 25 be identified but not rationalized;" right?

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1 A. That's what it says.

2 Q. Sir, isn't -- isn't it true that you knew that  
3 the compendium of epidemiology, the purpose of it was  
4 to support the controversy on smoking issues?

5 MR. McGAAN: Object, mischaracterizes the  
6 testimony, lacks foundation.

7 A. I'm not aware of that.

8 Q. Well sir, are you aware of the fact that the  
9 compendium of epidemiology was written so that it  
10 would meet legal guidelines?

11 MR. McGAAN: Object, lacks foundation.

12 A. I'm not aware of that.

13 (Plaintiffs' Exhibit 1472 was  
14 marked for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as  
17 Plaintiffs' Exhibit 1472, this is a document that  
18 bears the Bates number 107318454; right?

19 A. That's correct.

20 Q. And it was a document written concerning the  
21 compendium of epidemiological studies work plan;  
22 right?

23 A. That's what it says.

24 Q. All right. And according to the terms of  
25 reference on the first page, "It was agreed that Mr.

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1 Bruell would organise the production of a compendium  
2 of epidemiological studies illustrating the conflicts  
3 in the evidence, with special emphasis on projections  
4 of future mortality rates and of factors other than  
5 smoking which might influence those;" right?

6 A. That's what it says.

7 Q. Would you turn to the top of page three. There  
8 it also says, "The compendium will be written within  
9 generally accepted legal guidelines;" right?

10 A. That's what it says here.

11 Q. Now sir, while you were a member of the Tobacco  
12 Strategy Review Team, the information concerning the  
13 compendium of epidemiological -- epidemiology was  
14 provided to the team members; wasn't it?

15 A. I don't remember. It may have been.

16 Q. Now if we go back to Exhibit 1471, at point five  
17 it says, after it makes reference to the compendium,  
18 it says, "Following on from this, it is hoped to be  
19 able to complete and launch a more detailed  
20 compendium, which will be directed at the scientific  
21 community, in March 1989;" right?

22 A. That's what it says.

23 MR. McGAAN: Object, the question is  
24 misleading as to what it says.

25 Q. Now sir, you're aware that a compendium of

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1 epidemiological studies was prepared and with the  
2 intention that it be used outside the company;  
3 right?

4 MR. McGAAN: Objection, the question is  
5 misleading as posed; it mischaracterizes Exhibit  
6 1474.

7 Do you have the question in mind?

8 THE WITNESS: Yes.

9 A. The compendium --

10 According to the minutes, the compendium was  
11 produced to be directed to the scientific community.

12 Q. And was intended to be used outside the BAT  
13 Group companies; right?

14 A. The scientific community would reference that.

15 Q. All right. And sir, you received a copy of the  
16 compendium; didn't you?

17 A. I don't know.

18 (Plaintiffs' Exhibit 1473 was marked  
19 for identification.)

20 BY MS. WIVELL:

21 Q. Sir, showing you what's been marked as  
22 Plaintiffs' Exhibit 1473, this is a document that  
23 bears the Bates number 107318980; right?

24 A. That's correct.

25 Q. And it's a letter that was written to you at

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1 Brown & Williamson; right?

2 A. That's correct.

3 Q. It was written by Ray Thornton.

4 A. That's who signed it.

5 Q. And would you take a moment to read it, please.

6 It's a cover letter that attached a copy or  
7 enclosed a copy of the compendium of epidemiological  
8 studies; right?

9 A. That's correct.

10 Q. And in fact, Brown & Williamson did receive a  
11 copy of the compendium; didn't it?

12 A. I would imagine so, if this --

13 Q. You imagine so because it says you got it in  
14 Exhibit 1473; doesn't it?

15 MR. McGAAN: Let me just ask you not to  
16 interrupt the witness. You just cut off his answer.

17 A. It didn't say I got it, it said we're sending it  
18 to you.

19 Q. All right. But you have no doubt --

20 A. I have no doubt it arrived.

21 Q. All right. And Brown & Williamson used it as it  
22 was intended to be used; didn't it?

23 A. I -- I don't know how it was used.

24 MR. McGAAN: Object, vague.

25 MR. CASSIS: We're getting a little close

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1 to getting argumentative and antagonistic. We've  
2 done great for two days. Let's don't do that.

3 MS. WIVELL: I don't think we're anywhere  
4 close to being antagonistic, sir. I think we're  
5 just --

6 MR. CASSIS: Well --

7 MS. WIVELL: I think we're trying --

8 MR. CASSIS: -- under ordinary --

9 MS. WIVELL: I just want a question  
10 answered.

11 MR. CASSIS: Under ordinary circumstances  
12 that might be true, but we've got a special situation  
13 here.

14 MS. WIVELL: All right. Sir --

15 MR. CASSIS: You've done fine, Marti, for  
16 two days.

17 BY MS. WIVELL:

18 Q. Sir, you have no doubt that Brown & Williamson  
19 got the compendium; right?

20 A. I -- I have no reason to doubt that.

21 Q. All right. And you have no reason to doubt the  
22 fact that, once it got it, it used it as it was  
23 intended to be used; right?

24 MR. McGAAN: Object -- I'm sorry. Object,  
25 it calls for speculation, vague.

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1 A. I don't know how it was used or if it was used.

2 Q. Well, if it says in the TSRT notes it was hoped  
3 to complete and launch a more detailed compendium  
4 directed at the scientific community in March of  
5 1989 -- I'm sorry, strike that.

6 Was the compendium of epidemiological studies  
7 updated?

8 A. After being received?

9 Q. Yes, sir.

10 In other words, were new editions sent out?

11 A. Not that I can recall.

12 (Discussion off the stenographic record.)

13 Q. Now sir, it would be fair to say that before I  
14 gave you Exhibit 1473, you didn't remember even  
15 receiving the first compendium; did you?

16 A. That's correct.

17 MR. McGAAN: That's what he testified to.

18 Q. Now sir, would it be fair to say that you might  
19 have received additional editions of the compendium  
20 of epidemiology, but that you just can't remember  
21 it?

22 MR. McGAAN: Object, calls for  
23 speculation. Anything is possible.

24 A. "Might" is a very all-encompassing term, and  
25 I -- I don't know that I received it.

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- 1 Q. All right. Going back to Exhibit 1471, sir, --
- 2 A. Right.
- 3 Q. -- at point seven it says, "The Chairman
- 4 emphasized the importance of maintaining pressure on
- 5 smoking issues. He believed that the two compendiums
- 6 would be useful in this respect and stressed the need
- 7 to have them translated into German, Spanish and
- 8 Portugese;" right?
- 9 A. That's correct. That's what it says.
- 10 Q. And what's the --
- 11 What's the two compendiums that's referred to
- 12 here?
- 13 A. I thought that was covered in one of the papers
- 14 that you gave me where it said a summary and then
- 15 something Mr. Bramley said. Where was that?
- 16 If you go to 1471, --
- 17 Q. Yes, sir.
- 18 A. -- item four, "Mr. Bramley reported that the
- 19 summary compendium would be completed in November,"
- 20 et cetera, and then it says, "Following on from this,
- 21 it is hoped to be able to complete and launch a more
- 22 detailed compendium...." So I imagine those are the
- 23 two compendiums.
- 24 Q. All right. Now the chairman that's referred to
- 25 here in point seven, that's Patrick Sheehy; right?

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- 1 A. We're on 1471?
- 2 Q. Yes, sir.
- 3 A. Yeah, that's correct.
- 4 Q. Now we've talked from time to time about Mr.
- 5 Bruell. What was his position at -- at this time?
- 6 A. At this time Mr. Bruell was -- I believe he
- 7 was -- he had ceased to be the chairman of BATCo and
- 8 was the deputy -- deputy chairman of B.A.T
- 9 Industries.
- 10 Q. And he was also a B.A.T Industries board member;
- 11 right?
- 12 A. He was the deputy chairman of B.A.T Industries.
- 13 Q. Which would --
- 14 A. And then automatically was a board member.
- 15 Q. Thank you.
- 16 Now if we turn to the second page of Exhibit
- 17 1471, we see that Mr. Heard reviewed research and
- 18 development and talked about budget issues; right?
- 19 A. We're on item eleven?
- 20 Q. Yes, sir.
- 21 A. That's what it says here.
- 22 Q. All right. And as a matter of fact, the Tobacco
- 23 Strategy Review Team approved the budget-allocation
- 24 recommendations that Mr. Heard had made.
- 25 MR. PULTMAN: Objection, no foundation.

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1 A. Well it doesn't say so here. He's merely  
2 reporting to the -- the team what the total group  
3 expenditure was on R&D, as I read it.

4 Q. All right. Now sir, if we turn to page 24 -- or  
5 I'm sorry, strike that.

6 If we turn to point 24, there is reference to  
7 expenditures on fundamental research as well as for  
8 GREENDOT and AIRBUS; right?

9 MR. McGAAN: Turn to page four.

10 THE WITNESS: Oh, I'm sorry. I'm sorry.

11 A. That's correct.

12 Q. And the team did approve the expenditures that  
13 Mr. Heard recommended; didn't it?

14 MR. PULTMAN: Objection, no foundation.

15 A. I don't know.

16 Q. All right. Would you take a moment and review  
17 pages two, three and four of Exhibit 1471.

18 MR. McGAAN: Off the record.

19 THE REPORTER: Off the record, please.

20 (Discussion off the record.)

21 BY MS. WIVELL:

22 Q. You've read it, sir?

23 A. I've read it.

24 Q. All right. At various points on pages two,  
25 three and four of Exhibit 1471, there is a discussion

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1 of funding research -- I'm sorry, research funding  
2 for the BAT Group tobacco companies; right?

3 A. In its various forms, yes.

4 Q. All right. At point eleven there is discussion  
5 of allocations for expenditures to be made in 1988;  
6 right?

7 A. On the four projects, yes.

8 Q. All right. And as a result of the discussion at  
9 this meeting, it was agreed that the same funding  
10 system would be retained in 1989, but with an overall  
11 level of expenditure increase by 10 percent; right?

12 A. That's what it says.

13 Q. So you would agree that at this meeting the TSRT  
14 agreed to utilize the same expenditure for funding  
15 for 1988, but also add 10 percent; right?

16 MR. McGAAN: Object. I think that  
17 mischaracterizes what the document says.

18 A. It says the overall level of expenditure will be  
19 increased by ten percent, that's correct.

20 Q. All right. In other words, the team --

21 Well let me ask it this way: The team had been  
22 asked to increase expenditures by 25 percent; right?

23 MR. PULTMAN: Object to the question.

24 A. No.

25 Q. Well it says this, referring to the 10 percent,

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1 this -- this was a lower level than the original  
2 proposal which had been for an increase of 25  
3 percent; right?

4 A. That's correct. But I must ask you to -- or I  
5 must clarify that this is a -- this is not a proposal  
6 being put to the TSRT for approval, this is a  
7 statement of what is going to happen, and you can  
8 discern that by saying it -- it was noted that the  
9 overall level of funding had been agreed to by the  
10 companies that constitute the group R&D.

11 Q. And the group R&D expenditures were split  
12 between the various companies; right? In other  
13 words, each received -- it received a portion of the  
14 expenditures they had to pay.

15 A. No. Each group had its own R&D and determined  
16 its own level of expenditure. There were certain  
17 projects which were carried out in different  
18 locations but which were of interest to all members  
19 of the group, and there was an agreement on how those  
20 various projects should be funded.

21 Q. And that --

22 A. And also the level of expenditure.

23 Q. And that agreement is set forth at point 24 of  
24 Exhibit 1471; right?

25 A. That's --

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1 MR. McGAAN: Object, compound.

2 A. That's what it looks like.

3 Q. All right. Now, so the formula that's set forth  
4 here shows what Brown & Williamson, for example,  
5 would pay in 1988 and then in 1989; right?

6 MR. McGAAN: Object, vague as to pay for  
7 what. The record's getting confused here.

8 Go ahead and answer.

9 A. This was for fundamental research, and this is  
10 what this -- the numbers show.

11 Q. All right. Just to try and make the record a  
12 little clearer, so at least according to the TSRT  
13 minutes, Exhibit 1471, Brown & Williamson's portion  
14 of the fundamental research for 1988 would have been  
15 0.9 million pounds; right?

16 A. That's correct.

17 Q. And the portion of --

18 Or its portion of fundamental research for 1989  
19 would have been 2.08 million pounds.

20 A. That is what it says.

21 Q. And one of the reasons for the increase was the  
22 fact that 3.38 million pounds had been dedicated to  
23 research on Project AIRBUS.

24 A. That is what it says.

25 Q. Now Project AIRBUS was the BAT Group's response

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1 to project -- to RJR's Premier product; right?

2 A. That's correct.

3 MR. McGAAN: Object, mischaracterizes what  
4 the document says.

5 Q. And just for the record, these minutes of this  
6 meeting are from October 31st, 1988; right?

7 A. That is the date on the minute.

8 MS. WIVELL: All right. Why don't we pause  
9 for lunch.

10 MR. McGAAN: Okay.

11 THE REPORTER: Off the record, please.

12 (Luncheon recess taken at 12:03 o'clock  
13 p.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:04 o'clock  
3 p.m.)

4 BY MS. WIVELL:

5 Q. Sir, before we went off the record at lunch  
6 time, we were talking about Plaintiffs' Exhibit 1471;  
7 right?

8 (Discussion off the stenographic record.)

9 Q. Do you have it, sir?

10 A. I have it, yes.

11 Q. All right. And for the record, we have now  
12 re-marked a clean copy of Exhibit 1471 as it was  
13 produced by B.A.T Industries to the depository.

14 You now have Exhibit 1471 before you; right?

15 A. I do indeed.

16 Q. All right. And if we turn to the last -- or to  
17 the page Bates numbered 784, we were talking about  
18 3.38 million pounds of additional expenditure that  
19 was budgeted for Project AIRBUS as of the time of  
20 this meeting, October 31st, 1988; right?

21 A. That is what this note says.

22 Q. All right. Now AIRBUS was the project that had  
23 been developed at Brown & Williamson to try and meet  
24 the Premier product that had been developed by RJR;  
25 right?

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1 A. AIRBUS was the code name for work to be carried  
2 out to devise a Premier-type product.

3 (Plaintiffs' Exhibit 1474 was marked  
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as  
7 Plaintiffs' Exhibit 1474, these are the Tobacco  
8 Strategy Review Team minutes for the meeting that was  
9 held on March 20th, 1989; right?

10 A. That's what it says.

11 Q. You attended that meeting, sir?

12 A. I was there.

13 Q. And this was the next meeting of the TSRT that  
14 occurred after the meeting that's referred to in  
15 1471; right?

16 A. I would think so.

17 Q. Well it says at the top it's the --

18 Exhibit 1474 says it's the 11th meeting of the  
19 Tobacco Strategy Review Team; right?

20 A. That's correct.

21 Q. And Exhibit 1471 says it's the 10th meeting of  
22 the Tobacco Strategy Review Team; right?

23 A. Correct.

24 Q. All right. Now by the time this meeting  
25 occurred that's referred to in Exhibit 1474, Brown &

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1 Williamson had decided to terminate AIRBUS; hadn't  
2 it?

3 A. It had been decided to stop the work in Brown &  
4 Williamson because of the difficulties that had  
5 arisen, and to revert to doing basic research on this  
6 type of concept in Southampton.

7 Q. All right. Well sir, just so we're clear here,  
8 by the time the Tobacco Strategy Review Team meeting  
9 took place on March 20th, 1989, a determination had  
10 been made by Brown & Williamson to stop the AIRBUS  
11 research at B&W; right?

12 MR. McGAAN: Object, it's asked and  
13 answered, mischaracterizes his testimony.

14 A. Brown & Williamson had decided to stop  
15 development work on the project.

16 Q. All right. Now you reported at this meeting  
17 about the withdrawal of the Premier product; right?

18 A. The minutes show that I did.

19 Q. All right. Do you recall that, sir?

20 A. Not really, no.

21 Q. Now the Premier product's main failure was that  
22 it tasted badly; didn't it?

23 A. That was one of the reasons, I believe.

24 Q. Well it -- it says here, "Brown & Williamson's  
25 market research had shown that the main objection to

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1 the product by consumers was the poor taste;" right?

2 A. That note does say that.

3 Q. All right. And it also said it thought this

4 could be overcome; doesn't it?

5 MR. McGAAN: Object.

6 A. Which -- which paragraph?

7 MR. McGAAN: Mischaracterizes.

8 Q. Page -- or paragraph five, sir.

9 A. It does say, though, it was believed that this  
10 might be overcome.

11 Q. And that was you who was giving that report;  
12 wasn't it?

13 A. That apparently was me giving the report.

14 Q. All right. Do you remember anything more about  
15 what you said at this meeting other than is reported  
16 here?

17 A. I don't.

18 Q. Now sir, how much of the 3.8 million pounds --  
19 or I'm sorry, strike that.

20 How much of the 3.38 million pounds that was  
21 budgeted in October, on October 31st, 1988, had been  
22 spent to try and develop a Premier-like product by  
23 the time it was determined to suspend the work at  
24 B&W?

25 MR. PULTMAN: Objection, foundation.

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- 1 A. I have no idea.
- 2 Q. Well how many scientists had been devoted to
- 3 working full time at Brown & Williamson on the
- 4 Premier product between October 31st, 1988 and the
- 5 time you gave this report, March 20th of 1989?
- 6 A. I can't remember.
- 7 Q. Was anyone even working full time on trying to
- 8 develop a Premier-like product for B&W in that period
- 9 between October 31st, 1988 and March 20th, 1989?
- 10 A. There were people working on it, but it was
- 11 primarily in the literature -- literature research
- 12 area to see what options were available.
- 13 Q. Had there been any bench research done at all in
- 14 the period between October 31st, 1988 and March 20th,
- 15 1989 at B&W on developing a Premier-like product?
- 16 A. I can't remember.
- 17 Q. Now sir, AIRBUS was not the first project that
- 18 the BAT Group had been involved with that looked at a
- 19 smokeless cigarette; right?
- 20 A. I don't know.
- 21 Q. Well have you ever heard of Project ARIEL?
- 22 A. The name sounds familiar, but I don't know what
- 23 it was.
- 24 Q. Do you remember discussions at the TSRT about
- 25 Project ARIEL?

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1 A. No, I can't remember.

2 (Plaintiffs' Exhibit 1475 was marked

3 for identification.)

4 BY MS. WIVELL:

5 Q. Sir, showing you what's been marked as

6 Plaintiffs' Exhibit 1475, this is a document that

7 begins with the Bates number 105534272; right?

8 A. That's what it has on it.

9 Q. And isn't it -- I'm sorry, strike that.

10 This document is a report entitled "NICOTINE

11 ADMINISTRATION: ARIEL SMOKING DEVICES," dated 8 --

12 2.8.66; right?

13 A. That's what it says on the document.

14 Q. And according to this document, one of its

15 authors was I. W. Hughes; right?

16 A. That is correct.

17 Q. Now was Dr. Hughes a BATCo employee before he

18 became president -- or before he went to work at

19 Brown & Williamson?

20 A. He was.

21 Q. So he was originally, at -- at the time this

22 document was written, a BATCo employee.

23 A. He was.

24 Q. Would you turn to the page that ends with Bates

25 number 275, sir. There it talks about Project ARIEL

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1 as a research project aimed at the development of a  
2 smoking device from which a smoker can receive, in a  
3 suitable form, sufficient nicotine to give  
4 satisfactory physiological and psychological responses  
5 unaccompanied by the products of combustion and  
6 pyrolysis associated with normal cigarette smoking;  
7 right?

8 A. That's what it says.

9 Q. And it talks about the work being carried out at  
10 Battelle Institute in Geneva until the contract was  
11 terminated; right?

12 A. That's what it says.

13 Q. Now sir, would you turn to the page that ends  
14 with Bates number 283. It says there in a paragraph  
15 that begins "There is some merit...", the second  
16 sentence begins, "Evidence was, and is, available  
17 which suggests that normal cigarette smoke is  
18 tumorigenic and biologically irritating, and that  
19 these actions may be due to various chemical  
20 components arising from the pyrolysis of tobacco.  
21 Thus any device that eliminates these provides a  
22 safer smoke." Right?

23 A. That's what it says.

24 Q. Now sir, isn't it true that Project AIRBUS  
25 utilized concepts that were initially set out as part

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1 of Project ARIEL?

2 A. I don't know.

3 MR. McGAAN: Object, vague as to what  
4 concepts.

5 A. I don't know.

6 Q. Well sir, you're aware that Project ARIEL was  
7 viewed as of 1966 as being feasible and achievable;  
8 don't you?

9 MR. McGAAN: Object, mischaracterizes the  
10 evidence.

11 A. I haven't seen anything in here which says that.

12 Q. Well could you look at the top sentence on the  
13 page that we've just been looking at.

14 A. I'm sorry?

15 Yes.

16 Q. Doesn't the first sentence say, "The present  
17 position with the research shows that the original  
18 objective is feasible and achievable?"

19 A. It does.

20 MR. McGAAN: Object, mischaracterizes the  
21 conclusions stated throughout the document.

22 Q. Now sir, isn't it true that work on Project  
23 ARIEL was suspended because it was believed within  
24 BATCo that such a project was not necessary?

25 A. I have no idea.

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1 Q. Well isn't it true that in 19 -- in -- in the  
2 late '80s, when Project AIRBUS was being considered  
3 and then terminated, B.A.T did not wish to pursue  
4 such devices because they might lead to regulatory  
5 control by government agencies?

6 MR. McGAAN: Object.

7 MR. PULTMAN: Object to the form of the  
8 question.

9 MR. McGAAN: And it mischaracterizes the  
10 evidence with regard to terminating the project.

11 A. The project was terminated because we couldn't  
12 produce a satisfactory prototype.

13 Q. Well sir, isn't it true that within B.A.T  
14 Industries -- or the -- I'm sorry, strike that.

15 Isn't it true that producing a cigarette based  
16 on the ARIEL or AIRBUS technology was thought to lead  
17 to problems that were typically those of the  
18 pharmaceutical industry, such as regulatory control?

19 MR. McGAAN: Object, compound.

20 A. I don't know. I do not believe so.

21 Q. Let me try and rephrase the question.

22 Isn't it true that producing a cigarette based  
23 on AIRBUS technology was thought to lead to problems  
24 that were typically those of the pharmaceutical  
25 industry, especially -- significantly, regulatory

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1 control?

2 MR. McGAAN: Argumentative, calls for  
3 speculation.

4 A. No. As I've said, it was terminated because we  
5 did not have the technology to achieve it.

6 Q. Sir, showing you what's been previously marked  
7 as Plaintiffs' Exhibit 233, this is a research policy  
8 group meeting minutes from a meeting held September  
9 1987; right?

10 A. That's what it says.

11 Q. All right. And Exhibit 233, for the record, is  
12 Bates number 401034561; right?

13 A. That's what it says.

14 Q. Would you turn to the page that ends with Bates  
15 number 567. Would you please read to yourself pages  
16 seven and eight of Exhibit 233.

17 MR. McGAAN: Seven and eight did you say?

18 MS. WIVELL: Yes.

19 Q. You've read those pages, sir?

20 A. I've read those two pages.

21 Q. All right. And at page seven of Exhibit 233  
22 there is a discussion of, quote, revolutionary  
23 products; right?

24 A. There is a statement about revolutionary  
25 products.

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1 Q. And those revolutionary products are discussed  
2 in conjunction with the RJR Premier product; right?

3 A. That appears to be the case.

4 Q. And it is said --

5 It says here, quote, "Whilst the Research Policy  
6 Group agreed that we would not wish to pursue  
7 radically different products such as a pure aerosol  
8 delivery system, which bore no relationship --  
9 relation to conventional products, we could not  
10 ignore the RJR initiative," right?

11 MR. McGAAN: Object, you -- you misread it,  
12 a couple words.

13 Q. All right. Well let me rephrase it.

14 And it says here at page seven, "Whilst the  
15 Research Policy Group agreed that we would not wish  
16 to pursue radically different products such as pure  
17 aerosol delivery systems, which bore no relation to  
18 conventional products, we could not ignore the RJR  
19 initiative;" right?

20 A. That's what it says.

21 Q. And one of the reasons that the research policy  
22 group did not want to pursue radically different  
23 products was because they might result in  
24 classification of the product being a drug dosing  
25 device; right?

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1 MR. McGAAN: Object, calls for speculation.

2 A. I'm not certain that was the case.

3 Q. Well sir, isn't it true that the reason that  
4 Brown & Williamson decided not to pursue any further  
5 research on Premier after your report to the TSRT in  
6 early 1989 was because Premier failed?

7 MR. McGAAN: Object, vague.

8 A. That is not correct.

9 Q. Well sir, isn't it also true that one of the  
10 reasons that the BAT Group did not want to pursue a,  
11 quote, unquote, safer cigarette was because, by  
12 implication, it was implying that the cigarettes it  
13 already marketed were unsafe?

14 A. That is not correct.

15 MR. McGAAN: Object, assumes facts not in  
16 evidence, vague as to "safer," mischaracterizes the  
17 testimony.

18 You got to let me get the objection in.

19 THE WITNESS: Yeah.

20 (Plaintiffs' Exhibit 1476 was marked  
21 for identification.)

22 BY MS. WIVELL:

23 Q. Sir, showing you what's been marked as  
24 Plaintiffs' Exhibit 1476, this is a document bearing  
25 the Bates number 202218702; right?

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1 A. That is correct.

2 Q. This is a letter that Patrick Sheehy wrote in  
3 his capacity as chairman of B.A.T Industries; right?

4 MR. PULTMAN: Objection, no foundation.

5 A. It's a letter written and signed by -- or signed  
6 by Patrick Sheehy, yes.

7 Q. And it's on Patrick Sheehy's stationery, which  
8 indicates that at the time he wrote it he was  
9 chairman of B.A.T Industries P.L.C.; right?

10 A. That is so.

11 Q. And he signed it; didn't he?

12 A. He did.

13 Q. Would you take a moment and read that document,  
14 sir.

15 You've read Exhibit 1476, sir?

16 A. I have read it.

17 Q. Patrick Sheehy wrote this letter in response to  
18 the suggestion by the Canadian associate company,  
19 someone there, that a higher priority should be given  
20 to projects aimed at developing a safe cigarette;  
21 right?

22 MR. McGAAN: Objection, it mischaracterizes  
23 what the document actually says.

24 A. I don't think it does say that.

25 Q. Well he says, "...I thought that I should write

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1 to explain why it is that I cannot support your  
2 contention that we should give a higher priority to  
3 projects aimed at developing a 'safe' cigarette (as  
4 perceived by those who claim our current product is  
5 'unsafe') by either eliminating, or at least  
6 reducing to acceptable levels, all components claimed  
7 by our critics to be carcinogenic;" right?

8 A. That's what this says.

9 Q. All right. And as a matter of fact, Mr. Sheehy  
10 in his letter goes on to say that one reason why he  
11 didn't want to devote a lot of resources to  
12 developing a, quote, safe cigarette; right?

13 MR. McGAAN: Object, mischaracterizes what  
14 the document actually says.

15 A. Can you point that to me, please?

16 Q. Yes, sir. Doesn't it say that in the last  
17 paragraph of the second page?

18 MR. McGAAN: That -- let me object. I  
19 think the record's unclear, Marti, as to what you're  
20 asking. If you take a look at the transcript, I  
21 think you left something out.

22 Q. Well let me rephrase the question.

23 Sir, isn't it true that one of the reasons  
24 Patrick Sheehy did not want to devote more resources  
25 to developing a safe cigarette was that, in doing so,

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1 the implication was that the already-marketed  
2 products were unsafe?

3 MR. McGAAN: Object, mischaracterizes what  
4 the document actually says.

5 A. The paragraph that you're referring to, you will  
6 note that "safe" and "unsafe" are in quotes. I don't  
7 think there is any definition of what those terms  
8 mean.

9 Q. Well just so the record is clear, Patrick Sheehy  
10 says, quote, "A second practical objection is that in  
11 attempting to develop a, quote, safe, quote,  
12 cigarette you are, by implication in danger of being  
13 interpreted as accepting that the current product is,  
14 quote, unsafe, quote, and that is not a position that  
15 I think we should take." Right?

16 A. That is what the document says.

17 Q. And he goes on to see -- to say that as a result  
18 he does not think it was -- would -- I'm sorry.  
19 Strike that.

20 And he goes on to say that he believed the  
21 chance of developing a, quote, unquote, safe  
22 cigarette was not very high and did not justify,  
23 quote, committing the very large scale of resources  
24 that would be necessary to pursue the direct but  
25 arguably oversimple -- oversimplistic approach which

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1 our people are proposing, close quote; right?

2 MR. McGAAN: Object, mischaracterizes what  
3 the document actually says.

4 A. There is no close of quote there.

5 Q. I'm sorry, I was quoting from the document.

6 A. Oh.

7 Q. Let me rephrase the question.

8 Sir, isn't it true that Sir Patrick Sheehy said  
9 he did not support a line of research aimed at  
10 developing a safe cigarette?

11 MR. McGAAN: Object, mischaracterizes what  
12 the document says.

13 A. He says he does not believe in pursuing the line  
14 of action that was being proposed by IMASCO.

15 Q. All right. And he did not feel that its chance  
16 of success justified committing a, quote, very  
17 large -- the very large scale of resources that would  
18 be necessary to pursue the direct but arguably  
19 oversimple -- oversimplistic approach which your  
20 people are proposing, close quote; right?

21 A. That's what it says.

22 Q. Sir Patrick Sheehy also said -- talks about  
23 B.A.T.'s objectives in this letter; doesn't he?

24 A. In the third paragraph he does refer to a B.A.T  
25 objective.

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1 Q. And that objective was to make the whole subject  
2 of cigarette smoking acceptable to authorities and to  
3 the public; right?

4 A. That's what it says here.

5 Q. And in fact that's what the BAT Group tobacco  
6 companies had been doing the entire time you have  
7 been associated with them, trying to make the whole  
8 subject of cigarette smoking acceptable to the  
9 public; right?

10 MR. McGAAN: Object, argumentative, vague.

11 A. When you said the whole of my career, at the  
12 beginning of my career smoking was not considered  
13 unacceptable.

14 Q. All right. But from the time the Surgeon  
15 General's report -- strike that.

16 From the early '50s when the reports in the  
17 scientific literature first came out, you would agree  
18 that the BAT Group objectives have been to make the  
19 whole subject of cigarette smoking acceptable to the  
20 public; right?

21 MR. McGAAN: Object, lacks foundation as  
22 phrased, argumentative.

23 A. I don't have any basis for supporting that  
24 statement.

25 Q. All right. Well sir, you don't have any basis

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1 for disagreeing with what Sir Patrick Sheehy says  
2 when he says the B.A.T objective is and should be to  
3 make the whole subject of smoking acceptable to the  
4 authorities and to the public at large, since this is  
5 the real challenge facing the industry; right?

6 MR. McGAAN: Object, that's vague as  
7 phrased.

8 A. That is the stated objective.

9 Q. All right. And sir, you have no reason to  
10 disagree with that objective.

11 MR. McGAAN: That's vague as phrased.

12 Q. Your experience has not given you any reason to  
13 disagree with the statement that we have just read  
14 out of Sir Patrick Sheehy's letter; right?

15 MR. McGAAN: Still vague as phrased.

16 A. I find nothing wrong with it.

17 MS. WIVELL: I have nothing further.

18 THE REPORTER: Let's go off the record,  
19 please.

20 (Discussion off the record.)

21 MS. WIVELL: Your Honor, it's Marti Wivell  
22 from Robins.

23 THE COURT: Yes.

24 MS. WIVELL: Can you -- can you hear me?

25 Okay. I am done with my examination of this

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1 witness. Counsel has indicated -- indicated to me  
2 last week that he was going to do an examination.  
3 I'm prepared to go forward. I'm also hoping to be  
4 done today, since, according to the court order, the  
5 most that Mr. McGaan would have would be two hours,  
6 and I'm hoping to finish. I'm getting some  
7 resistance here. I'm getting counsel telling me that  
8 he wants a half an hour to 45 minutes to take a  
9 break, and then the counsel for the witness telling  
10 me that for medical reasons he's going to quit at  
11 3:00. I think that's what I'm hearing.

12 I really would like the court's direction to the  
13 parties that we continue this deposition till we're  
14 done today.

15 MR. McGAAN: Your Honor, this is Andrew  
16 McGaan from Kirkland & Ellis. I represent Brown &  
17 Williamson.

18 THE COURT: Yes.

19 MR. McGAAN: Ms. Wivell just completed  
20 here -- it's 1:45, approximately, eastern time -- her  
21 examination of Mr. Pritchard, and I indicated I  
22 needed about a half hour, 45 minutes to get organized  
23 to conduct my examination, which I will complete in  
24 under two hours. I have documents I've disclosed in  
25 advance to Ms. Wivell because I did intend to do a

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1 direct. I also have a stack now in front of me of  
2 approximately 70 or 80 documents -- maybe it's 50 --  
3 that she's marked in the course of her examination  
4 and about 34 pages of notes. I don't need to read  
5 through all of them, but I need to follow up on a  
6 handful of issues she's raised. And -- and that's  
7 why I intend to simply take a break for about a half  
8 hour or so and organize it and then cut through  
9 this.

10 So I'm not sure where the problem lies. It's a  
11 very typical request. Indeed, we just took an hour  
12 lunch break between noon and 1:00, and Ms. Wivell  
13 didn't give me any indication that she was going to  
14 finish in about 35 minutes after we came back or I  
15 could have started to get better organized then. But  
16 that's neither here nor there. I'm talking about  
17 something very, I think, simple, which is a brief  
18 break to make an organized exam.

19 Now on the health question, Your Honor, that's a  
20 wholly separate issue. Here at the deposition is Mr.  
21 Charlie Casis, who's an attorney with Brown, Todd &  
22 Heyburn, and I'll let him talk to that. He  
23 represents Mr. Pritchard personally.

24 MR. CASSIS: Your Honor, I'm Charlie Casis,  
25 a lawyer in Louisville, and I represent Mr. Pritchard

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1 personally.

2 I provided to counsel a one-, two-, three-,  
3 four-page report from Mr. Pritchard's cardiovascular  
4 doctor and a Dr. Terry Henkel, who is a very  
5 prominent physician here in town and who's treated  
6 Mr. Pritchard for over eleven years for very severe  
7 heart problems and blacking-out problems. These  
8 reports were provided to counsel. In addition to  
9 that, I have the reports from Dr. Kenneth A.  
10 Hafendorfer and an affidavit from Dr. Hafendorfer  
11 setting forth his treatment of Mr. Pritchard for  
12 over, I don't know, probably 15 or 20 years, in which  
13 he lists and outlines all of the medical and cardiac  
14 problems, including the sick sinus syndrome. This  
15 man has a pacemaker that was just inserted in March  
16 of '97, he has atherosclerotic heart disease in which  
17 he has had angioplasty, and he's also has been  
18 diagnosed as having an abdominal aortic aneurism. He  
19 has had blackouts and was hospitalized as late as May  
20 of 1997.

21 Both of these doctors have put severe  
22 restrictions which we have monitored as we've gone  
23 through this deposition for two days. Each of these  
24 doctors say that Mr. Pritchard should not be deposed  
25 but for a maximum of two one-hour periods per day

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1 with at least an hour break in between. We've taken  
2 a break each time not for that long. I've asked Mr.  
3 Pritchard, who's on many medications, one of which he  
4 takes at 6:00 in the morning and which wears off  
5 between 2:00 and 3:00 o'clock, and which he gets  
6 light-headed and is subject to blackouts for which he  
7 was just hospitalized this past summer, and it's --  
8 each of these doctors say he should not be deposed  
9 for any more than three consecutive days, and that  
10 the questioning should not be antagonistic or  
11 emotionally charged. And that's why Mr. Pritchard  
12 has left the room now. And it should proceed  
13 unemotionally with adequate time for him to  
14 comprehend and formulate responses. And each of  
15 these doctors --

16 And let me just read the cardiac -- the  
17 cardiovascular surgeon's report here, Your Honor. And  
18 if -- if Your Honor does not have these reports, I'd  
19 be more than happy to fax them to him. But it was my  
20 impression there was allowed five days to take this  
21 deposition. It is my understanding that Marti was to  
22 have 10 hours to depose Mr. Pritchard. I was told to  
23 arrange to have the deposition to last five days. My  
24 conference room has been reserved for five days. It  
25 sounds like this deposition will get over probably by

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1 noon tomorrow, but I am not going to let Mr.  
2 Pritchard go, based upon these medical reports that I  
3 have where his health could be in jeopardy and where  
4 Dr. Henkel, the cardiac -- cardiovascular surgeon,  
5 says that he would recommend that each deposition  
6 last for no more than one hour and he would hope he  
7 would be required to testify for no more than three  
8 successive days. And here's a man who's on this  
9 medication for blackouts, who has a pacemaker and  
10 who's under severe medical treatment and care, Your  
11 Honor, that we're going to try to force him to go  
12 past 2:00 or 3:00 o'clock today. He went till past  
13 3:00 yesterday. And he takes this medication to keep  
14 him from blacking out twice a day; he takes it at  
15 6:00 in the morning and again in the evening at 6:00  
16 o'clock. All of this information was made available  
17 to all of the lawyers in this situation, and I don't  
18 know why we have to raise this issue now that we're  
19 going to go to the end of the day. Because I'm not  
20 going to jeopardize this man's life in the -- in --  
21 in the light of these two medical reports, both who  
22 are prominent physicians in this city, saying that  
23 this deposition should be restricted to these various  
24 times. And to be --  
25 And with all due respect to Mr. McGaan and to

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1 Marti, I'm just not going to jeopardize this man's  
2 life. Because in each of these reports it said that  
3 giving this deposition could be life-threatening.  
4 And it's not me that's saying that, Your Honor, it's  
5 very -- these prominent doctors. They just -- they  
6 say that it could be very life-threatening. And I'm  
7 just not going to jeopardize my client to that  
8 extent.

9 THE COURT: I don't understand what the  
10 problem is. What's the problem, Marti?

11 MS. WIVELL: Well, Your Honor, frankly, I  
12 think there wouldn't be one if we could begin right  
13 now and go forward with the rest of the examination.  
14 I think we'd be done by 3:00 or maybe even 3:30.  
15 That's where I'm sitting. And I think --

16 THE COURT: Well what -- what's the problem  
17 continuing till tomorrow?

18 MS. WIVELL: Well, Your Honor, it's just a  
19 matter of time and expense, and that's the issue.  
20 And I made --

21 THE COURT: I don't understand. What do  
22 you mean, "time and expense?"

23 MS. WIVELL: Well no, it's just I tried  
24 very hard to narrow my testimony -- or my questioning  
25 so we could get done as quickly as possible, and I

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1 think we could if Mr. McGaan could go forward now.

2 THE COURT: You mean you don't want to stay  
3 another day down there.

4 MS. WIVELL: That's right, sir.

5 THE COURT: Okay. Well I think you're kind  
6 of weighing the convenience of staying another day  
7 against what is clearly a serious health question,  
8 and I think the answer is that the witness's health  
9 should not be jeopardized, and that if you want to  
10 continue beyond a period of time that may raise  
11 questions concerning the witness's health, that you  
12 should continue the deposition until tomorrow.

13 MS. WIVELL: Fine, Your Honor. Thank you.

14 MR. CASSIS: Thank you, Your Honor.

15 THE COURT: Have a nice day.

16 THE REPORTER: Okay. We're off the record.

17 (Discussion off the record.).

18 (Recess taken.)

19 DIRECT EXAMINATION

20 BY MR. McGAAN:

21 Q. Mr. Pritchard, I've got some questions. We will  
22 get as far as we can today. I understand from Mr.  
23 Casis and from the judge's orders, we need to stop at  
24 3:00, but let's go as far as we can and pick it up in  
25 the morning. Let me begin --

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1 Well let me tell you, I'm going to begin with  
2 some of the issues that Ms. Wivell raised in her  
3 examination. But before we do that, tell the jury  
4 again when it is you retired from Brown & Williamson.

5 A. I retired from Brown & Williamson on 31st March  
6 1993.

7 Q. So it's something over four years ago you left  
8 the company.

9 A. That's correct.

10 MS. WIVELL: Objection.

11 Q. And have you been in retirement since that time?

12 A. I have.

13 Q. Have you been working in the tobacco business in  
14 any fashion?

15 A. No.

16 Q. You've been out of the game, as it were?

17 A. I've been out of everything.

18 Q. Please take a look at what was previously marked  
19 as Exhibit 140.

20 MR. McGAAN: Marti, do you need your copies  
21 to follow along?

22 MS. WIVELL: Yes, I --

23 Well go ahead.

24 MR. McGAAN: Let me know if you need to  
25 pause.

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1 MS. WIVELL: Thank you.

2 BY MR. McGAAN:

3 Q. This is a 1970 memorandum that was evidently  
4 authored by Geoff Felton, and Ms. Wivell asked you  
5 questions about this earlier in the deposition. Do  
6 you recall that?

7 A. I do.

8 Q. Now would you turn to the second page of the  
9 document. Have you seen --

10 Had you seen this document before Ms. Wivell  
11 presented it to you in this deposition?

12 A. I hadn't.

13 Q. So in all your time at BATCo and at B&W, you  
14 never saw this document.

15 A. I didn't see this document.

16 Q. It says on the second page, quote, "One result  
17 of the greater influence which Wakeham has with Mr.  
18 J. Cullman has been the agreement, albeit reluctant,  
19 to permit Philip Morris to do 'in-house' biological  
20 research," close quote. Do you see that?

21 A. "Biological work."

22 Q. Thank you, "biological work."

23 A. Yes, I do.

24 Q. And Mr. Cullman and Mr. Wakeham were employees  
25 of Philip Morris, as far as you understand?

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1 A. They were.

2 MS. WIVELL: Objection.

3 A. I understand they were.

4 Q. So in reading this sentence, sitting here today,  
5 is it your understanding that that refers to  
6 something that occurred internally at Philip Morris?

7 MS. WIVELL: Objection.

8 A. That would appear to be so.

9 Q. Now the next sentence reads, quote, "When this  
10 was first mooted, Wakeham was told that there was a  
11 tacit agreement between the heads of the US Companies  
12 that this would not be done," close quote. Do you  
13 see that?

14 A. I do.

15 Q. Do you understand, in reading this document for  
16 the first time in the deposition, that this refers to  
17 in-house biological research?

18 MS. WIVELL: Objection, leading.

19 A. That's what it says.

20 Q. And so that's how you understood it in reading  
21 it in this deposition?

22 MS. WIVELL: Objection, leading.

23 A. That's correct.

24 Q. During the time you were the chief executive  
25 officer of Brown & Williamson between 1985 and 1993,

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1 Mr. Pritchard, were you aware of any such agreement  
2 that is referred to in this document?

3 A. I was not aware of any such agreement.

4 Q. Were you responsible in articulating and putting  
5 forth Brown & Williamson's position about group  
6 research within the larger BATCO Group while you were  
7 CEO of B&W?

8 A. Together with the scientists.

9 Q. You would seek the advice and consultation of  
10 your scientists?

11 A. Of course.

12 MS. WIVELL: Objection.

13 Q. Well describe for the jury what your role was as  
14 CEO with regard to formulating on an annual basis  
15 Brown & Williamson's position on group research and  
16 research priorities.

17 MS. WIVELL: Objection, form.

18 A. The head of research and his team would prepare  
19 what they believed was a program of research that  
20 Brown & Williamson -- research and product  
21 development, the two go hand and hand -- that Brown &  
22 Williamson should pursue. This would then be  
23 discussed with myself and my COO. And if we were  
24 persuaded, this would be incorporated into the  
25 company plan.

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1 Q. In fulfilling that function as CEO of Brown &  
2 Williamson, did you ever seek out the views of your  
3 competitors in the U.S. tobacco industry?

4 A. Never.

5 Q. Did any of them ever approach you or communicate  
6 with you in any way about any, quote, tacit  
7 agreement, close quote?

8 A. No.

9 MS. WIVELL: Objection.

10 Q. Had anyone ever told you that such an agreement  
11 existed before the time you arrived at Brown &  
12 Williamson?

13 A. No.

14 Q. Did the research facility at --

15 Or did BATCo's research facility at Southampton  
16 conduct at various times biological research?

17 A. It did.

18 Q. What was Brown & Williamson's financial  
19 involvement in that research, generally?

20 A. It -- it participated in the funding, together  
21 with the other CAC companies.

22 Q. Did it participate --

23 Beyond funding, did it participate in the  
24 planning of that research?

25 MS. WIVELL: Objection.

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1 A. I believe they -- they were involved in  
2 discussions.

3 Q. You can set that aside.

4 Would you next take a look at Exhibit 1476.

5 This is a December 29, 1986 letter from Sir Patrick  
6 Sheehy to Mr. Crawford at -- an Imasco Limited;  
7 correct?

8 A. That's correct.

9 Q. This is a document that Ms. Wivell asked you  
10 about during her examination.

11 A. That's correct.

12 Q. What -- what --

13 What was Imasco Limited in 1986?

14 A. Imasco is the parent company of the tobacco  
15 business and I think insurance business in Canada.

16 Q. What was the name of the tobacco business under  
17 Imasco?

18 A. Imperial Tobacco Canada Limited, I think.

19 Q. Do you know what Mr. Crawford's position at  
20 Imasco Limited was?

21 A. He was the chairman.

22 Q. And what was B.A.T Industries' relationship with  
23 Imasco Limited, if you know?

24 A. B.A.T, I believe, held approximately 40 percent  
25 of the shareholding of Imasco, and therefore was a

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1 large shareholder.

2 Q. In the letter Mr. -- Sir Patrick Sheehy writes,  
3 in a sentence Ms. Wivell drew your attention to,  
4 quote -- this is on the first page -- quote, "Since  
5 there is such a wide discrepancy between your  
6 approach and that of the rest of the Group, I thought  
7 I should write to explain why it is that I cannot  
8 support your contention that we should give a higher  
9 priority to projects aimed at developing a, quote,  
10 safe, close quote, cigarette, paren, as perceived by  
11 those who claim our current product is, quote,  
12 unsafe, close quote, paren, by either eliminating, or  
13 at least reducing to acceptable levels, all  
14 components claimed by our critics to be  
15 carcinogenic," end quote. Is that what the letter  
16 says?

17 A. That's what the letter says.

18 Q. Are you familiar with the -- the research  
19 program to which Sir Patrick Sheehy is referring in  
20 this letter?

21 A. I have a recollection of it.

22 Q. What is the program that he's referring to?

23 A. I believe it was called EMN.

24 Q. What -- was this a project --

25 Which company was sponsoring project EMN?

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1 A. I would not use the word "sponsoring." The word  
2 "proposed," would be "proposed," was Imperial  
3 Tobacco Company.

4 Q. The Canadian company.

5 A. The Canadian company.

6 Q. What did EMN stand for, project EMN?

7 A. I believe it stood for Eliminate, the M escapes  
8 me for a moment, and Neutralize. I'll think of the M  
9 in a moment.

10 Q. What was your understanding of what this  
11 proposal entailed?

12 A. It --

13 This was the removal of everything that was  
14 considered undesirable in tobacco smoke.

15 Q. Considered undesirable by whom?

16 A. By the industry critics.

17 Q. Are you familiar with Imperial's efforts to push  
18 this proposal on BATCo?

19 MS. WIVELL: Objection.

20 A. I was, yeah.

21 Q. Can you describe that for the jury?

22 A. It -- it was, to the best of my recollection, a  
23 proposal that a totally different approach to  
24 research should be adopted which would entail  
25 virtually the curtailment of all the existing

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1 activity, and devote not only the current at that  
2 time 1986 budget, but also substantially increase  
3 budget to pursuing these aims.

4 Q. You say "curtailment of all the existing  
5 activity." What are you referring to --

6 A. By all --

7 Q. -- by that?

8 A. All the work that was currently or -- or at that  
9 time was being undertaken in the R&D area.

10 Q. Who from Imperial made this proposal?

11 A. The proposal, as I was first made aware of it,  
12 was made by Mr. Warren and a Mr. Dunn.

13 Q. Who were they?

14 A. Mr. Dunn was the chief scientist, the head of  
15 research; and Mr. Warren, last position that I'm  
16 aware of that he held, he was the director  
17 responsible for manufacturing.

18 Q. Was this at Imperial Tobacco?

19 A. This was at Imperial Tobacco Canada.

20 MS. WIVELL: I'd like to note my objection  
21 to the form.

22 Q. Where did Mr. Dunn and Mr. Warren work?

23 A. In Montreal.

24 Q. For what company?

25 A. Imperial Tobacco Company Canada.

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1 Q. How did you become aware of their proposal?

2 A. They came to the United Kingdom and made a  
3 proposal.

4 Q. You were present?

5 A. I was present.

6 Q. What was your position at the time?

7 A. 1986.

8 No, this was 1986. I was, I think, deputy  
9 chairman. Because the proposal, I think, was made in  
10 1985.

11 Q. Okay. So your -- the proposal for -- for  
12 project EMN was made before the time you became CEO  
13 of Brown & Williamson.

14 A. That's correct.

15 MS. WIVELL: Objection.

16 Q. After you became CEO of Brown & Williamson, did  
17 the company take a position on whether it would  
18 support this proposal for research at BATCo?

19 A. No.

20 Q. What was your own view about whether this  
21 direction ought to be adopted, this proposed  
22 direction?

23 A. The EMN -- the EMN proposal?

24 Q. Right.

25 A. I thought it was totally unfeasible.

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1 Q. Why is that?

2 A. Because the BATCo scientists that I consulted  
3 with considered it was -- was so.

4 Q. When you --

5 Unfeasible in what way?

6 A. Because they -- it --

7 It was a very sketchy proposal, and it wasn't a  
8 detailed proposal in terms of which particular  
9 components of smoke should be eliminated, how to go  
10 about it, and that they viewed it as being too weak a  
11 proposal to carry forward.

12 Q. Would this proposal, had it been adopted, have  
13 had any financial impact on Brown & Williamson?

14 MS. WIVELL: Objection.

15 A. I don't know.

16 Q. How was --

17 How was this program to be funded?

18 A. That wasn't made clear either.

19 Q. Where was --

20 A. Other than the amounts of money that were being  
21 talked about as being suggested.

22 Q. Were they proposing that Imperial would pay the  
23 costs of this research?

24 A. No, they --

25 MS. WIVELL: Objection.

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1 A. No, they weren't.

2 Q. Where was the research going to be done

3 according to the proposal?

4 A. In the various research centers.

5 Q. Which research centers are you talking about?

6 A. Brown & Williamson, Canada, Germany, Souza Cruz,

7 Brazil, and Southampton.

8 Q. Turning back to the document, on the second page

9 there is a -- second paragraph from the bottom,

10 there's a sentence that reads, "Firstly, your

11 objective is probably unattainable - no matter what

12 can be done in chemical terms (and I believe this to

13 be very limited) there will continue to be strong

14 vocal factions that seek to denigrate the product and

15 they are likely to continue to move the goal posts

16 away from whatever initial target we were able to

17 achieve," close quote. Do you see that?

18 A. I do.

19 Q. Do you know what --

20 Do you have an understanding of what Sir Patrick

21 was referring to here?

22 MS. WIVELL: Objection.

23 A. I can only assume that, given the strong vocal

24 factions that were denigrating and continue to

25 denigrate the product, that whatever was -- whatever

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1 improvements were made would not be sufficient.

2 Q. Did you agree with his assessment, that the  
3 objective that the Canadians were proposing was  
4 unattainable?

5 MS. WIVELL: Objection.

6 A. That was my understanding.

7 Q. Turning back to the first page where the  
8 project -- the proposal described is either  
9 eliminating or reducing certain components in the  
10 smoke, had BATCo done that kind of research before?

11 A. Quite a lot of work had been done in this area.

12 Q. What had come of it?

13 A. Not very much.

14 Q. The BATCo scientists to whom you referred  
15 earlier who you consulted with the likelihood of  
16 success from a project like this, had they been  
17 involved in that research at BATCo?

18 A. They had.

19 Q. Do you have an understanding of what kind of  
20 research was pursued at Imperial after this time,  
21 1987 and beyond?

22 A. I believe they did carry on with some research  
23 in this area, but on a very limited scale.

24 Q. Did the Canadians, to your knowledge, conduct  
25 any Ames testing research?

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- 1 A. I believe they did.
- 2 Q. Do you know whether Sir Patrick Sheehy's views,  
3 or this letter for that matter, had any impact on the  
4 pursuit of Ames testing?
- 5 A. I don't.
- 6 Q. You don't know either way?
- 7 A. No.
- 8 Q. Let me hand you now what was previously marked  
9 as Exhibit 301. These are notes of the Group  
10 Research & Development Conference in Sydney,  
11 Australia, March 1978; correct?
- 12 A. That's correct.
- 13 Q. You recall Ms. Wivell had some questions for you  
14 about this document?
- 15 A. I do.
- 16 Q. I see it's dated, if you look to the last page,  
17 April 6, 1978; --
- 18 A. That's correct.
- 19 Q. -- correct?
- 20 There's a stamp on this document that reads on  
21 the front page, TDB READING FILE CIRCULATED." Do you  
22 know what that means?
- 23 A. Yes, I think I do.
- 24 Q. What does it mean?
- 25 A. TDB was Tobacco Division Board, which was often

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1 how the BATCo board was referred to, and this means  
2 that it would have gone into the reading file and be  
3 circulated.

4 I don't think it's common practice in the United  
5 States, but it is very common in the United Kingdom  
6 for letters or reports that directors should see go  
7 into a reading file, which only one copy goes in, and  
8 then that -- that file is circulated and everyone  
9 signs off on it.

10 Q. Which directors are you referring to?

11 A. The BATCo directors.

12 Q. Under point one in Exhibit 301 there's a  
13 statement to which Ms. Wivell drew your attention  
14 earlier in this deposition that reads, quote, "There  
15 has been no change in the scientific" --

16 A. I'm sorry, could you just --

17 Q. Oh, I'm sorry. Under point one.

18 A. One, right.

19 Q. The very first couple sentences, which reads,  
20 "There has been no change in the scientific basis  
21 for the case against smoking. Additional evidence of  
22 smoke-dose related incidence of some diseases  
23 associated with smoking has been published. But  
24 generally this has long ceased to be an area of  
25 scientific controversy." Do you see that?

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1 A. I do.

2 Q. What is your understanding what that means?

3 A. Well the scientific controversy that had -- had  
4 ceased to be an area of concern was in fact the --  
5 the statistical relationship. I think the  
6 statistical relationship between smoking and possible  
7 disease had generally been established.

8 Q. You were on the board of BATCo at the time these  
9 minutes were put into the reading file?

10 A. March 1978. Yes, I should have been.

11 Q. Okay. You can set that aside.

12 MR. CASSIS: Ray, let me see you for just a  
13 minute, please. Off the record.

14 THE REPORTER: Off the record, please.

15 (Discussion off the record.)

16 BY MR. McGAAN:

17 Q. Let me hand you what's been marked as Exhibit  
18 317, Mr. Pritchard. This is a two-page exhibit that  
19 you talked about earlier in this deposition. The  
20 first page is a memo from P. J. Ricketts entitled  
21 "LEGAL CONSIDERATIONS IN SMOKING & HEALTH ISSUES;"  
22 correct?

23 A. Correct.

24 Q. On the second page is a four-paragraph statement  
25 entitled "LEGAL CONSIDERATIONS ON SMOKING & HEALTH

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1 POLICY;" correct?

2 A. That's correct.

3 Q. Now if you take a look at the first sentence in

4 the second paragraph of this statement, it reads,

5 quote, "For this reason it is essential that

6 statements about cigarette smoking or the smoking and

7 health issue generally must be factually and

8 scientifically correct," close quote. Correct?

9 A. That's correct.

10 Q. Were you aware of this policy at the time that

11 you were CEO of Brown & Williamson?

12 A. I believe I was.

13 Q. Did Brown & Williamson put this policy into

14 effect?

15 A. I'm sure they did.

16 Q. Well what was Brown & Williamson's policy while

17 you were CEO with regard to --

18 A. Clear -- clear -- just a moment. I had not

19 arrived at Brown & Williamson. I'd seen the

20 document, but I had not arrived at Brown & Williamson

21 in March of '84.

22 Q. What was Brown & Williamson's policy with regard

23 to statements about scientific issues in the

24 smoking-and-health field while you were the CEO?

25 A. Essentially what it says here: statements must

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1 be factually and scientifically correct.

2 Q. You've been handed Exhibit 1454, which is a  
3 document entitled "BROWN & WILLIAMSON TOBACCO  
4 CORPORATION, REPORT TO BATUS BOARD OF DIRECTORS ON  
5 SMOKING AND HEALTH."

6 A. Correct.

7 Q. Would you turn to page 17 of the document. Are  
8 you there?

9 Are you there?

10 A. I'm there.

11 Q. You see there's a statement that Ms. Wivell drew  
12 your attention to earlier, quote, "An unfortunate  
13 statement would bring -- could bring the house down,"  
14 close quote. Do you see that? It's in about the  
15 middle of the page.

16 A. Yes, I do.

17 Q. And then the next sentence down reads, "Products  
18 liability litigation may be the most obvious arena  
19 where a misstatement could cause difficulty." Do you  
20 see that?

21 A. I see that.

22 Q. And then the sentence in the last paragraph, the  
23 first sentence in the last paragraph reads, "In the  
24 legislative context the impact of an unwise company  
25 statement would be no less devastating." Do you see

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1 that?

2 A. I do.

3 Q. Did you agree --

4 During the time you were CEO of Brown &  
5 Williamson, did you agree that the company should  
6 avoid misstatements or unfortunate statements or  
7 unwise statements?

8 A. I certainly did.

9 Q. What relationship did that have with the policy  
10 about statements on scientific issues in the  
11 smoking-and-health arena?

12 MS. WIVELL: Objection.

13 A. I'm sorry, I don't understand the question.

14 Q. Well what --

15 You've just testified that during the time you  
16 were CEO of Brown & Williamson, you agreed that the  
17 company should avoid unfortunate statements or  
18 misstatements or unwise statements, and I'm simply  
19 asking you whether that bore any relationship, that  
20 feeling, with the policy regarding speaking on  
21 smoking-and-health issues with scientific and factual  
22 accuracy.

23 MS. WIVELL: Objection.

24 A. I -- I think it states itself that we were  
25 concerned that we should be factually and

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1 scientifically correct.

2 Q. And would you have considered an incorrect  
3 statement by the company regarding scientific issues  
4 as unfortunate or unwise?

5 MS. WIVELL: Objection.

6 A. I would indeed.

7 MR. McGAAN: I'm sorry, did you get the  
8 answer?

9 A. I would.

10 Q. All right. You can put that down.

11 You were asked some questions about an  
12 organization called INFOTAB.

13 A. Yes.

14 Q. Do you recall that?

15 A. I do.

16 Q. Where is INFOTAB headquartered?

17 A. I believe it's in Brussels.

18 Q. To your knowledge, was Brown & Williamson a  
19 member of INFOTAB?

20 A. I thought that it was only the European  
21 companies, including the various monopolies. The  
22 French monopoly, Swedish monopoly and Italian  
23 monopoly were all involved.

24 Q. What are the monopolies that you're referring  
25 to? I don't know that the jury would understand what

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1 that is.

2 A. The monopolies are the tobacco industry in those  
3 countries is in fact owned by the government, so the  
4 Swedish monopoly -- tobacco monopoly is owned by the  
5 Swedish government, the Italian tobacco monopoly is  
6 owned by the Italian government, the French tobacco  
7 monopoly, SEITA, is owned by the French government,  
8 or was.

9 Q. Well to your knowledge, was BATUS a member of  
10 INFOTAB?

11 A. I don't think so. BATCo was, but I don't -- I'm  
12 not sure BATUS was.

13 Q. BATCo, the British company, was.

14 A. Correct.

15 Q. During the time you were CEO of Brown &  
16 Williamson, did you have any dealings with INFOTAB?

17 A. No.

18 Q. Did you ever review INFOTAB statements before  
19 arriving at policies at Brown & Williamson?

20 A. I don't remember seeing any.

21 Q. You don't remember seeing any what?

22 A. Documents from INFOTAB.

23 Q. While you were at Brown & Williamson.

24 A. Whilst I was at Brown & Williamson.

25 MR. McGAAN: Why don't we stop here,

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1 Charlie. I'm going to start a much longer  
2 examination.

3 MR. CASSIS: That's fine.

4 THE REPORTER: Off the record, please.

5 (Deposition recessed at 3:07 o'clock p.m.)

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## 1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify  
3 that I am qualified as a verbatim shorthand reporter;  
4 that I took in stenographic shorthand the testimony  
5 of RAYMOND J. PRITCHARD at the time and place  
6 aforesaid; and that the foregoing transcript  
7 consisting of pages 160 through 347 is a true and  
8 correct, full and complete transcription of said  
9 shorthand notes, to the best of my ability.

10 Dated at Louisville, Kentucky, this 28th  
11 day of October, 1997.

12

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15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, RAYMOND J. PRITCHARD, the deponent,  
3 hereby certify that I have read the foregoing  
4 transcript consisting of pages 160 through 347, and  
5 that said transcript is a true and correct, full and  
6 complete transcription of my deposition except:

7

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15 RAYMOND J. PRITCHARD

16 Deponent

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18 Sworn and subscribed to before me this day  
19 of , 1997.

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22

23 Notary Public

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25 My commission expires .

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